



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

29 July 2019*

(Reference for a preliminary ruling — Regulation (EC) No 261/2004 — Air transport — Denied boarding — Concepts of ‘compensation’ and ‘further compensation’ — Type of damage for which compensation is available — Material or non-material damage — Deduction — Further compensation — Assistance — Information provided to passengers)

In Case C-354/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Bacău (Regional Court, Bacău, Romania), made by decision of 26 April 2018, received at the Court on 30 May 2018, in the proceedings

Radu-Lucian Rusu,

Oana-Maria Rusu

v

SC Blue Air — Airline Management Solutions SRL,

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, J. Malenovský (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- SC Blue Air — Airline Management Solutions SRL, by M. Popa, avocat,
- the Romanian Government, by C.-R. Canțăr, L. Lițu and A. Wellman, acting as Agents,
- the German Government, initially by T. Henze, M. Hellmann, E. Lankenau and A. Berg, subsequently by the latter three, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,

* Language of the case: Romanian.

– the European Commission, by L. Nicolae 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 request for a preliminary ruling concerns the interpretation of Articles 4, 7, 8 and 12 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 context of a dispute between Mr Radu-Lucian Rusu and Ms Oana-Maria Rusu, on one side, and SC Blue Air — Airline Management Solutions SRL ('Blue Air'), on the other, concerning the compensation for the non-material and material damage suffered by them on account of a denial of boarding.

Legal context

International law

- 3 Article 29 of the Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28 May 1999, and approved on behalf of the European Union by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38), provides:

'In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.'

EU law

- 4 Recitals 1, 10 and 20 of 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.

...

(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.

...

(20) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.’

5 Article 1(1) of that regulation provides:

‘This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:

- (a) they are denied boarding against their will;
- (b) their flight is cancelled;
- (c) their flight is delayed.’

6 Article 4(3) of the regulation provides:

‘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.’

7 Article 7(1)(b) of the same regulation reads as follows:

‘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 1 500 and 3 500 kilometres;

...’

8 Article 8(1) of Regulation No 261/2004 provides:

‘Where reference is made to this Article, passengers shall be offered the choice between:

- (a) – reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger’s original travel plan, together with, when relevant:
 - a return flight to the first point of departure, at the earliest opportunity;
- (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or
- (c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger’s convenience, subject to availability of seats.’

9 Article 12(1) of that regulation provides:

‘This Regulation shall apply without prejudice to a passenger’s rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.’

Romanian law

10 Article 1350 of the *codul civil* (Civil Code) reads as follows:

‘(1) Everyone must fulfil his contractual obligations.

(2) If, without justification, a person does not fulfil such obligations, he shall be liable for the damage caused to the other party and shall be obliged to compensate for that damage, under the conditions provided for by law.

(3) Unless otherwise provided for by law, neither of the parties may refrain from applying the rules on contractual liability in favour of other rules which would be more advantageous to them.’

11 Article 1530 of the Civil Code provides:

‘The creditor shall have the right to damages as compensation for the harm which the debtor has caused him and which is a direct and necessary consequence of an unjustified or, as the case may be, deliberate failure to fulfil obligations.’

12 Article 1531 of the Civil Code states:

‘(1) The creditor shall have the right to full compensation for the damage which he has suffered as a result of the failure to fulfil obligations.

(2) Damage shall include the actual loss suffered by the creditor and the benefit which he has been denied. When establishing the extent of the damage, account shall also be taken of the expenses incurred by the creditor, within reasonable bounds, in order to avoid or limit the damage.

(3) The creditor shall also have the right to compensation for non-material damage.’

13 Article 1533 of the Civil Code provides:

‘The debtor shall be liable only for the damage resulting from a failure to fulfil obligations which he foresaw or could have foreseen at the time at which the contract was concluded, except where the failure is deliberate or due to serious misconduct on his part. Even in the latter case, the damages shall cover only that which is a direct and necessary consequence of the failure to fulfil obligations.’

14 Article 1534 of the Civil Code states:

‘(1) If, by his wrongful act or omission, the creditor has contributed to the damage, the compensation payable by the debtor shall be reduced accordingly. This provision shall also apply when the damage is partly caused by an event for which the creditor has assumed the risk.

(2) The debtor shall not be required to pay compensation for damage which the creditor could have avoided with minimal care.’

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

15 The applicants in the main proceedings reserved with Blue Air two plane tickets to allow them to travel, on 6 September 2016, from Bacău (Romania) to London (United Kingdom), where they are established and are working.

- 16 At the time of boarding, the applicants in the main proceedings were informed that the flight would be operated using a different aircraft from the one originally scheduled and that, given the smaller capacity of that aircraft, they would no longer be able to board.
- 17 As a result, the applicants in the main proceedings were rescheduled on a flight operated by Blue Air, and thus arrived in London on 11 September 2016.
- 18 Following those events, Blue Air offered each of the applicants in the main proceedings a free plane ticket valid until 24 March 2017, an offer which they refused on the ground that the harm suffered exceeded the value of a plane ticket.
- 19 Next, Blue Air offered the applicants in the main proceedings, on the basis of Regulation No 261/2004, compensation of EUR 400 per person. In that regard, the applicants in the main proceedings considered that that compensation seeks to provide compensation only for the non-material damage suffered and not for the material damage, which falls within the concept of ‘further compensation’.
- 20 The applicants in the main proceedings thus brought an action before the Judecătoria Bacău (Court of First Instance, Bacău, Romania). Before that court, they claimed that Blue Air should be ordered to pay them EUR 437 and EUR 386, respectively, for material damage, resulting from the withholding of salary. The applicants in the main proceedings subsequently provided clarification as to the amounts of salary actually lost. In addition, the applicants in the main proceedings each sought EUR 1 500 for non-material damage. They further submitted that a dismissal procedure had been launched against Mr Rusu, but that he ultimately received only a reprimand.
- 21 Blue Air argued that the applicants in the main proceedings were not entitled to compensation beyond the EUR 400 provided for in Article 7(1)(b) of Regulation No 261/2004 since they had not specifically asked for faster transport with another airline on another route, but had accepted the flight scheduled for 11 September 2016. Furthermore, Blue Air contended that, had the applicants in the main proceedings requested an alternative flight, it would have looked for one which would have enabled them to reach their destination.
- 22 The Judecătoria Bacău (Court of First Instance, Bacău) upheld the action in part, ordering Blue Air to pay each of the applicants in the main proceedings EUR 400 as compensation for non-material damage and dismissing the remainder of the claims submitted by them.
- 23 Both the applicants in the main proceedings and Blue Air lodged an appeal against the decision of the Judecătoria Bacău (Court of First Instance, Bacău) before the referring court, which considers it necessary to clarify certain aspects relating to the interpretation of Articles 4, 7, 8 and 12 of Regulation No 261/2004.
- 24 In those circumstances, the Tribunalul Bacău (Regional Court, Bacău, Romania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is the amount of EUR 400 provided for in Article 7(1)(b) of Regulation No 261/2004 intended to compensate primarily for the material damage, with the non-material damage being assessed pursuant to Article 12 thereof, or does Article 7(1)(b) of Regulation No 261/2004 primarily cover the non-material damage, with the material damage being subject to Article 12 thereof?
- (2) Does an amount corresponding to a loss of salary which exceeds the amount of EUR 400 established by Article 7(1)(b) of that regulation fall within the concept of “further compensation” referred to in Article 12 thereof?

- (3) Under the second sentence of Article 12(1) of Regulation No 261/2004, “the compensation granted under this Regulation may be deducted from such compensation”. Must that provision be interpreted as leaving to the national court’s discretion the decision to deduct from the further compensation the amount awarded under Article 7(1)(b) of that regulation, or is that deduction compulsory?
- (4) In the event that the deduction of that amount is not compulsory, what are the elements on the basis of which the national court is to decide whether to deduct from the further compensation the amount referred to in Article 7(1)(b)?
- (5) Must the damage caused as a result of the non-payment of salary, owing to the fact that an employee had been unable to be present at work by reason of his delayed arrival at his destination as a result of re-routing, be analysed from the perspective of fulfilment of the obligations provided for in Article 8 of Regulation No 261/2004, or Article 12 of that regulation, read in conjunction with Article 4 thereof?
- (6) Does an airline operator’s fulfilment of the obligation to provide assistance under Articles 4(3) and 8 of Regulation No 261/2004 mean presenting a passenger with comprehensive information regarding all that passenger’s re-routing options as provided for in Article 8(1)(a) to (c) of that regulation?
- (7). On whom does the burden of proving that the re-routing was done at the earliest opportunity under Article 8 of Regulation No 261/2004 rest?
- (8) Does Regulation No 261/2004 impose an obligation on passengers to carry out searches to identify other routes to their destination and to ask a company to find seats on those routes, or is the airline obliged to look, of its own motion, for the most advantageous option whereby those passengers may be transported to their destination?
- (9). Is the fact that passengers accepted an airline’s proposal offering them a flight on 11 September 2016, even though they could assume that they would not be paid for the period during which they were absent from work, relevant for determining the damage suffered by those passengers?’

The questions referred for a preliminary ruling

The first, second, fifth and ninth questions

- 25 By its first, second, fifth and ninth questions, which should be examined together, the referring court asks, in essence, whether Article 7(1)(b) of Regulation No 261/2004 must be interpreted as meaning that the amount provided for in that provision is intended to compensate for damage such as loss of salary, or whether such damage may be the subject of the further compensation provided for in Article 12(1) of that regulation. In addition, it asks how to determine that damage in the light of the regulation.
- 26 It should be noted, as a preliminary point, that Regulation No 261/2004 seeks to ensure a high level of protection for air passengers regardless of whether they are denied boarding or whether their flight is cancelled or delayed, since they are all caused similar serious trouble and inconvenience connected with air transport (judgment of 19 November 2009, *Sturgeon and Others*, C-402/07, EU:C:2009:716, paragraph 44).

- 27 In that context, in the first place, Article 7(1) of Regulation No 261/2004 provides for compensation for passengers, the amount of which varies, inter alia, according to the distance of the flight. More specifically, Article 7(1)(b) of that regulation provides for compensation of 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.
- 28 With regard to the amounts set by Article 7(1) of Regulation No 261/2004, they are intended to compensate, in a standardised and immediate manner, for the damage that is constituted by the inconvenience that, inter alia, as is the case in the main proceedings, denied boarding in the carriage of passengers by air causes, without the passengers having to suffer the inconvenience inherent in the bringing of actions for damages before the courts having jurisdiction (see, by analogy, judgment of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 45).
- 29 The very wording of Article 4(3) of Regulation No 261/2004, which refers to Article 7 of that regulation, requires the air carrier concerned to compensate immediately passengers to whom it has denied boarding against their will.
- 30 Such fixed amounts are intended to provide compensation only for the damage that is almost identical for every passenger concerned (see, by analogy, judgments of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 43, and of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 52).
- 31 However, neither Article 7(1) of Regulation No 261/2004 nor that regulation taken as whole provides for the compensation of individual damage, inherent in the reason for travelling of the passengers concerned, redress for which requires a case-by-case assessment of the extent of the damage caused and can consequently only be the subject of compensation granted subsequently on an individual basis (see, to that effect, judgment of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 43).
- 32 In the case in the main proceedings, following a denial of boarding, the applicants in the main proceedings suffered a loss of salary because they were unable to be present at their place of work by reason of their delayed arrival at their destination.
- 33 Such a loss of salary must be regarded as individual damage, inherent in the specific situation of the passengers concerned, and it requires a case-by-case assessment of the extent of the damage thus caused.
- 34 Accordingly, such damage is not covered by the fixed compensation provided for in Article 7(1)(b) of Regulation No 261/2004.
- 35 In the second place, it should be observed that, according to the first sentence of Article 12(1) of Regulation No 261/2004, that regulation is to apply without prejudice to a passenger's rights to further compensation.
- 36 It is apparent from that wording that Regulation No 261/2004 cannot preclude an aggrieved passenger from being compensated for damage specific to him, and which is meant to be assessed subsequently on an individual basis, in so far as national or international law grant him the right to such compensation, provided that that compensation is further to the fixed compensation provided for in that regulation.
- 37 Compensation must be regarded as 'further compensation', within the meaning of Article 12(1) of Regulation No 261/2004, where it has its origin in one of the situations provided for in Article 1(1) of that regulation, being the source of the inconvenience compensated for in a standardised and immediate manner under the regulation.

- 38 In the present case, it is established that the loss of salary, first, is specific to the applicants in the main proceedings, which is meant to be assessed subsequently on an individual basis, and, second, has its origin in a denial of boarding against their will, the inconvenience of which is eligible for compensation in a standardised and immediate manner under Regulation No 261/2004.
- 39 In those circumstances, such a loss of salary must be regarded as damage which may be the subject of the further compensation provided for in Article 12(1) of Regulation No 261/2004.
- 40 In the third place, as follows from paragraph 31 of this judgment, since Regulation No 261/2004 does not provide for the compensation of individual damage such as loss of salary, it is for the referring court to determine and assess the various constituent elements of that damage including, as the case may be, the conduct of the aggrieved passengers, as well as the extent of the compensation for that damage, on the relevant legal basis.
- 41 In the light of the foregoing, the answer to the first, second, fifth and ninth questions is that, in the first place, Article 7(1)(b) of Regulation No 261/2004 must be interpreted as meaning that the amount provided for in that provision is not intended to compensate for damage such as loss of salary; in the second place, that damage may be the subject of the further compensation provided for in Article 12(1) of that regulation and, in the third place, it is for the referring court to determine and assess the various constituent elements of that damage, as well as the extent of the compensation for it, on the relevant legal basis.

The third and fourth questions

- 42 By its third and fourth questions, which should be examined together, the referring court asks, in essence, whether Regulation No 261/2004, and in particular the second sentence of Article 12(1) thereof, is to be interpreted as allowing the national court having jurisdiction to deduct the compensation granted under that regulation from further compensation, but does not require it to do so. In addition, it asks on the basis of which conditions the national court having jurisdiction could make that deduction.
- 43 In that regard, the second sentence of Article 12(1) of Regulation No 261/2004 provides that the compensation granted under that regulation may be deducted from the further compensation.
- 44 It thus follows from that clear wording that the second sentence of Article 12(1) of Regulation No 261/2004 does not require such a deduction to be made, while also not precluding it from potentially being made.
- 45 As has been stated in paragraphs 35 and 36 of this judgment, it is national or international law which may afford the passenger concerned a right to further compensation, and Regulation No 261/2004 applies, for its part and as follows from the first sentence of Article 12(1) thereof, without prejudice to that right.
- 46 Furthermore, it is apparent from Article 12(1) of Regulation No 261/2004, when its two sentences are read together, that that regulation cannot be interpreted as laying down any conditions whatsoever that may limit the power of the national court having jurisdiction to make any deduction of the compensation granted under that regulation from further compensation. The existence of such conditions would therefore be incompatible with the second sentence of Article 12(1) of the regulation.
- 47 In the light of the foregoing, the answer to the third and fourth questions is that Regulation No 261/2004, and in particular the second sentence of Article 12(1) thereof, must be interpreted as allowing the national court having jurisdiction to deduct the compensation granted under that

regulation from further compensation but does not require it to do so, the regulation not laying down on the national court having jurisdiction conditions on the basis of which it could make that deduction.

The sixth and eighth questions

- 48 By its sixth and eighth questions, which should be examined together, the referring court asks, in essence, whether Article 4(3) of Regulation No 261/2004, read in conjunction with Article 8(1) of that regulation, is to be interpreted as requiring the operating air carrier to present the passengers concerned with comprehensive information regarding all the options set out in the second of those provisions, or whether that provision also obliges the passengers in question to contribute actively to seeking information to that end.
- 49 In that regard, first of all, Article 4(3) of Regulation No 261/2004 provides *inter alia* that, if the operating air carrier denies boarding to passengers against their will, it is to assist them in accordance with Article 8 of that regulation.
- 50 Next, Article 8 of Regulation No 261/2004, entitled ‘Right to reimbursement or re-routing’, states, in paragraph 1 thereof, that passengers are to be offered the choice between three options which are specified therein, in essence: (i) reimbursement of the ticket cost and, when relevant, a return flight to the first point of departure, at the earliest opportunity; (ii) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; and (iii) re-routing, under comparable transport conditions, to that destination at a later date at the passenger’s convenience, subject to availability of seats.
- 51 Furthermore, recital 10 of Regulation No 261/2004 summarises the essential elements of that choice, stating that passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue their carriage by air under satisfactory conditions.
- 52 Finally, it is apparent from recital 20 of Regulation No 261/2004, *inter alia*, that passengers denied boarding should be fully informed of their rights so that they can effectively exercise those rights.
- 53 It follows from a combined reading of all those provisions and recitals of Regulation No 261/2004, in the first place, that it is for the air carrier which denied boarding to passengers to assist those passengers, in particular by offering them a choice, subject to the conditions laid down, respectively, in points (a), (b) and (c) of Article 8(1) of that regulation.
- 54 It thus follows, in the second place, that such an offer must provide the passengers denied boarding with the information needed to enable them to make an effective choice, and in so doing either to cancel their flight and be reimbursed for the cost of their ticket, or to continue their transport to their final destination, under comparable transport conditions, at the earliest opportunity or at a later date.
- 55 It thus follows, in the third place, that in the case of a passenger denied boarding who is entitled to assistance from the air carrier concerned, including the right to be given the information needed to enable him to make an effective and informed choice, the enjoyment of such a right cannot entail any obligation whatsoever on his part to contribute actively to seeking the information which the offer from that carrier must contain.
- 56 In the light of the foregoing, the answer to the sixth and eighth questions is that Article 4(3) of Regulation No 261/2004, read in conjunction with Article 8(1) of that regulation, must be interpreted as requiring the operating air carrier to present the passengers concerned with comprehensive information on all the options set out in the second of those provisions, with the passengers in question being under no obligation to contribute actively to seeking information to that end.

The seventh question

- 57 By its seventh question, the referring court asks, in essence, whether Article 8(1)(b) of Regulation No 261/2004 must be interpreted as meaning that, for the purposes of that provision, the burden of proving that passengers were re-routed at the earliest opportunity rests with the operating air carrier, or whether it must be interpreted as meaning that that burden rests with the passengers concerned.
- 58 As is apparent from paragraphs 53 and 54 of this judgment, an air carrier which has denied boarding to passengers is obliged to assist those passengers in order to enable them to make an effective and informed choice between the various options laid down, respectively, in points (a), (b) and (c) of Article 8(1) of that regulation.
- 59 It therefore also falls to the operating air carrier to offer the passengers concerned the option of being re-routed to their final destination, under comparable transport conditions and at the earliest opportunity, pursuant to Article 8(1)(b) of Regulation No 261/2004.
- 60 In making a specific offer, the operating air carrier must take into account and combine several relevant factors which determine that offer, in particular the arrival time at the final destination following the re-routing envisaged, the conditions subject to which the re-routing envisaged may take place and whether the re-routing at issue is practicable through its own good offices or requires the assistance of another air carrier, as the case may be depending on the latter's availability.
- 61 In addition, the responsibility of offering and organising re-routing under Article 8(1)(b) of Regulation No 261/2004, a responsibility borne by the air carrier concerned, entails the burden of proving that the re-routing thus organised was performed at the earliest opportunity.
- 62 In the light of the foregoing, the answer to the seventh question is that Article 8(1)(b) of Regulation No 261/2004 must be interpreted as meaning that, for the purposes of that provision, the burden of proving that the re-routing was performed at the earliest opportunity rests with the operating air carrier.

Costs

- 63 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:

1. **In the first place, Article 7(1)(b) 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 amount provided for in that provision is not intended to compensate for damage such as loss of salary; in the second place, that damage may be the subject of the further compensation provided for in Article 12(1) of Regulation No 261/2004, and, in the third place, it is for the referring court to determine and assess the various constituent elements of that damage, as well as the extent of the compensation for it, on the relevant legal basis.**
2. **Regulation No 261/2004, and in particular the second sentence of Article 12(1) thereof, must be interpreted as allowing the national court having jurisdiction to deduct the compensation granted under that regulation from further compensation but does not require it to do so, the regulation not laying down on the national court having jurisdiction conditions on the basis of which it could make that deduction.**
3. **Article 4(3) of Regulation No 261/2004, read in conjunction with Article 8(1) of that regulation, is to be interpreted as requiring the operating air carrier to present the passengers concerned with comprehensive information on all the options set out in the second of those provisions, with the passengers in question being under no obligation to contribute actively to seeking information to that end.**
4. **Article 8(1)(b) of Regulation No 261/2004 is to be interpreted as meaning that, for the purposes of that provision, the burden of proving that the re-routing was performed at the earliest opportunity rests with the operating air carrier.**

[Signatures]