



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

22 June 2016*

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 2(f) and Article 10(2) — Partial reimbursement of the ticket price where a passenger is downgraded on a flight — Concepts of ‘ticket’ and ‘price of the ticket’ — Calculation of the reimbursement owed to the passenger)

In Case C-255/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Düsseldorf (District Court of Düsseldorf, Germany), made by decision of 30 April 2015, received at the Court on 29 May 2015, in the proceedings

Steef Mennens

v

Emirates Direktion für Deutschland,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, D. Šváby, J. Malenovský (Rapporteur), M. Safjan and M. Vilaras, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Mennens, on his own behalf,
- Emirates Direktion für Deutschland, by U. Steppler, Rechtsanwalt,
- the Italian Government, by G. Palmieri, acting as Agent, and C. Colelli and F. Di Matteo, avvocati dello Stato,
- the European Commission, by W. Mölls, K.-P. Wojcik and N. Yerrell, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 2(f) and 10(2) 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 Mr Steef Mennens and Emirates Direktion für Deutschland ('Emirates') concerning the request for partial reimbursement of the price of a ticket after he was downgraded.

Legal context

- 3 Recitals 1, 2 and 4 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.
 - (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.
 - ...
 - (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.'
- 4 Article 2 of that regulation, entitled 'Definitions', provides, that for the purpose of the regulation, the following definitions shall apply:
 - (f) "ticket" means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent.'
- 5 Article 8 of that regulation, entitled 'Right to reimbursement or re-routing', provides, in paragraph 1 thereof:

'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;

...'

6 Article 10 of that regulation, entitled 'Upgrading and downgrading', provides, in paragraph 2 thereof:

'If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse

- (a) 30% of the price of the ticket for all flights of 1500 kilometres or less, or
- (b) 50% of the price of the ticket for all intra-Community flights of more than 1500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1500 and 3500 kilometres, or
- (c) 75% of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.'

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

- 7 Mr Mennens booked and purchased an all-inclusive ticket allowing him to take a series of flights operated by Emirates. Those flights were from Düsseldorf (Germany) to Dubai (United Arab Emirates) during the night of 26 to 27 July 2013, Dubai to Tokyo (Japan) on 29 July 2013, Singapore (Singapore) to Dubai, during the night of 23 to 24 August 2013 and Dubai to Frankfurt (Germany) on 24 August 2013. The flights between Düsseldorf, Dubai and Tokyo were to be in first class, while those between Singapore, Dubai and Frankfurt were to be in business class. The ticket indicated separately the 'tariff' for all the flights purchased by Mr Mennens, namely EUR 2 371, the various related 'taxes and charges' and the 'total' of those components, namely EUR 2471.92, but did not set out the individual price of each of the flights concerned.
- 8 Since Emirates downgraded Mr Mennens from first class to business class between Düsseldorf and Dubai, the applicant requested that it reimburse him EUR 1853.94, corresponding to 75% of his ticket price, taxes and fees included, pursuant to Article 10(2)(c) of Regulation No 261/2004. In response to that request, Emirates reimbursed EUR 376 to Mr Mennens.
- 9 In the proceedings between Emirates and Mr Mennens before the Amtsgericht Düsseldorf (Local Court, Düsseldorf, Germany), Emirates argued, in essence, that where a ticket permits a passenger to take a series of flights and where on one of those flights or flight segments the passenger is downgraded, the percentage of the reimbursement provided for in Article 10(2)(c) of Regulation No 261/2004 must not be applied to the overall price of the ticket, but just to the price of the flight or flight segment. It maintains, second, that that percentage should be applied not to the price inclusive of the taxes and charges for that flight or flight segment, but only to its price exclusive of taxes.
- 10 The referring court considers that the outcome of this aspect of the dispute depends on the interpretation to be given to Article 10(2), read in conjunction with Article 2(f), of Regulation No 261/2004.

11 It is in those circumstances that the Amtsgericht Düsseldorf (District Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 10(2), read in conjunction with Article 2(f), of Regulation (EC) No 261/2004 to be interpreted as meaning that a “ticket” is the document by which the passenger is (in particular) entitled to be transported on the flight on which he was downgraded, irrespective of whether further flights, such as connecting flights or return flights, are also indicated on that document?

(2) If Question 1 is answered in the affirmative: Is Article 10(2), read in conjunction with Article 2(f), of Regulation (EC) No 261/2004 to be further interpreted as meaning that the “price of the ticket” is the amount which the passenger has paid for all of the flights indicated on the ticket, even if the downgrading occurred on only one of the flights?

If Question 1 is answered in the negative: For the purposes of determining the amount which forms the basis for the reimbursement under Article 10(2) of Regulation (EC) No 261/2004, must account be taken of the airline company’s published price for transportation, in the class booked, on the section affected by the downgrade or must the quotient resulting from the distance of the section affected by the downgrade and the total length of the flight be determined and then multiplied by the total flight price?

(3) Is Article 10(2) of Regulation (EC) No 261/2004 to be further interpreted as meaning that the “price of the ticket” is only the price of the flight alone, to the exclusion of taxes and charges?’

The jurisdiction of the Court

12 Emirates contests the jurisdiction of the Court to answer the preliminary ruling, claiming that the referring court itself has no jurisdiction to hear the case in the main proceedings.

13 In that regard, it should be noted that the alleged lack of jurisdiction of the referring court has no bearing on the jurisdiction of the Court.

14 By its request, the referring court asks the Court to give a preliminary ruling on the interpretation of Regulation No 261/2004. Since that regulation is a measure adopted by the institutions of the European Union, the Court clearly has jurisdiction to rule on that request, in accordance with the first paragraph of Article 267 TFEU.

15 Furthermore, it is clear from case-file that the interpretation requested of the Court is necessary to enable the referring court to give judgment in the case at issue in the main proceedings. In those circumstances, it is not for the Court, given the allocation of functions between itself and the national courts, to determine whether the decision to refer has been taken in accordance with the rules of national law governing the organisation of courts and their procedure (judgment of 23 November 2006 in *Asnef-Equifax and Administración del Estado* (C-238/05, EU:C:2006:734, paragraph 14 and the case-law cited) or, consequently, to reject the request for a preliminary ruling.

The questions to be referred for a preliminary ruling

The first and second questions

- 16 By its first and second questions, which should be examined together, the referring court asks whether Article 10(2), read in conjunction with Article 2(f), of Regulation No 261/2004 must be interpreted as meaning that where a passenger is downgraded on a flight:
- the ticket to be taken into account in determining the reimbursement owed in that respect for the passenger concerned is the document establishing his right of transport on just that one flight, even though more flights are listed on such a document, and
 - the price to be taken into account in determining the reimbursement is the amount paid by the passenger for all flights listed on the ticket, the price published by the air carrier for the flight and the class which are the subject of the downgrading, or the part of the price of the ticket corresponding to the quotient resulting from the distance of the flight in question and the total distance which the passenger is entitled to travel?
- 17 In that regard, Article 10(2)(a) to (c) of Regulation No 261/2004 provides that if an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it must reimburse a part of the price of that ticket, which is itself determined by reference, inter alia, to the distance of the flights concerned.
- 18 That provision thus links the concepts of ‘ticket’ and ‘flight’.
- 19 A ‘ticket’ is defined, according to Article 2(f) of Regulation No 261/2004, as a valid document giving the passenger entitlement to transport, or an equivalent document in paperless form, issued or authorised by the air carrier or its authorised agent.
- 20 A ‘flight’ is not defined by Regulation No 261/2004. However, it is apparent from settled case-law that a flight consists in an air transport operation, being as it were a ‘unit’ of such transport, performed by an air carrier which fixes its itinerary (judgments of 10 July 2008 in *Emirates Airlines*, C-173/07, EU:C:2008:400, paragraph 40, and 13 October 2011 in *Sousa Rodríguez and Others*, C-83/10, EU:C:2011:652, paragraph 27).
- 21 Accordingly, the ticket is the document entitling the passenger to transport, which itself is capable of applying, as the case may be, to one or more flights.
- 22 Each one of those flights which constitutes a unit of transport is, in principle, intended to be performed in accordance with the conditions agreed upon between the passenger and the air carrier. Those conditions include, inter alia, the placing of that passenger in a specific class, for which his ticket, according to Article 10(2) of Regulation No 261/2004, was purchased.
- 23 Thus, the ticket in the passenger’s possession entitles that passenger in particular to be transported on one or more specific flights and to be placed in the class agreed upon on each of those flights.
- 24 Where the air carrier places that passenger on a specific flight in a lower class than that for which the ticket was purchased, that passenger does not benefit, on the flight at issue, from the service agreed upon in consideration for the price paid. However, that downgrading has no impact on the services agreed upon for any other flights which the ticket permits that passenger to take.
- 25 Accordingly, Article 10(2) of Regulation No 261/2004 does not to apply to those other flights.

- 26 That analysis is supported by the objective of Regulation No 261/2004, which, as is clear from recitals 1, 2 and 4, is to ensure a high level of protection for passengers and consumers, by strengthening their rights in a number of situations involving serious trouble and inconvenience, and also redressing those situations in a standardised and immediate manner (see, to that effect, judgment of 10 January 2006 in *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 82).
- 27 Where, as in a situation such as that at issue in the main proceedings, an air carrier places a passenger in a class lower than that for which he purchased his ticket, on a given flight, the inconvenience caused to that passenger derives from the fact that he does not benefit, during that flight, from the comfort corresponding to the class indicated in that ticket.
- 28 Thus, Article 10(2) of Regulation No 261/2004 aims to compensate a specific inconvenience, related to a given flight and not to the transport of the passenger as a whole.
- 29 Consequently, it is only the price of the flight on which that passenger was downgraded that is to be used as a basis for the reimbursement provided for under that provision, and not the overall price of the transport to which that ticket entitles him.
- 30 However, where the ticket merely states the overall price for the transport of the passenger and therefore does not specify the price of the flight on which the downgrading took place, the basis should be the part of the price of the ticket corresponding to the quotient resulting from the distance of the flight in question and the total distance which the passenger is entitled to travel.
- 31 Since the downgrading of the passenger concerns only a segment of his transport, which corresponds to a given distance, using this method makes it possible to adjust the reimbursement obtained by the passenger so that it is in proportion to the part of transport during which such a downgrade caused him inconvenience.
- 32 Having regard to all the foregoing considerations, the answer to the first and second questions is that Article 10(2), read in conjunction with Article 2(f), of Regulation No 261/2004, must be interpreted as meaning that where a passenger is downgraded on a flight, the price to be taken into account in determining the reimbursement for the passenger affected is the price of the flight on which he was downgraded unless that price is not indicated on the ticket entitling him to transport on that flight, in which case it must be based on the part of the price of the ticket corresponding to the quotient resulting from the distance of that flight and the total distance which the passenger is entitled to travel.

The third question

- 33 By its third question, the referring court asks in essence whether Article 10(2) of Regulation (EC) No 261/2004 must be interpreted as meaning that, where a passenger is downgraded on a flight, the price of the ticket to be taken into consideration for the purposes of determining the reimbursement owed to that passenger is solely the price of that flight, to the exclusion of taxes and charges.
- 34 In that regard, Article 10(2)(a) to (c) of Regulation No 261/2004 refers, without further clarification, to the 'price of the ticket', which means, as is apparent from the answer to the second question, the price of the flight on which the passenger concerned was downgraded.
- 35 It is undisputed that that price includes, inter alia, two distinct components, namely, first, the 'tariff' applied by the air carrier to transport the passenger who purchased the ticket, and, second, the taxes and charges levied by the air carrier on that occasion.

- 36 Those taxes and charges are unavoidable components of the final price to be paid by the passenger in order to avail of the service proposed by the air carrier (see, by analogy, judgments of 19 July 2012 in *ebookers.com Deutschland*, C-112/11, EU:C:2012:487, paragraph 14, and 18 September 2014 in *Vueling Airlines*, C-487/12, EU:C:2014:2232, paragraph 36).
- 37 However, it follows from the wording which introduces subparagraphs (a) to (c) of Article 10(2) of Regulation No 261/2004 that if an air carrier places a passenger in a class lower than that for which the ticket was purchased, it must reimburse part of the price of the ticket, as provided in subparagraphs (a) to (c) thereof.
- 38 That phrase implicitly emphasises the responsibility of the operating air carrier in respect of downgrading, meaning that, in its capacity as person providing a given flight, as defined in the case-law cited in paragraph 20 above, the decision to place a passenger, contrary to what has been agreed with and purchased by that passenger, in a class lower than that provided for in his ticket is attributable to that air carrier and it alone.
- 39 Thus, Article 10(2) of Regulation No 261/2004 must, taken as a whole, be read as meaning that, in determining the reimbursement owed to the passenger, the components of the price of the flight such as taxes and charges, despite being connected to that flight, cannot be taken into consideration since they are not an intrinsic part of that flight.
- 40 That conclusion is supported by the objective of Article 10(2) of Regulation No 261/2004, which is, as has been noted in paragraphs 26 to 28 above, to compensate, by way of a flat-rate sum, the inconvenience caused by the decrease in comfort associated with the downgrading by the air carrier over the entire distance and for the entire duration of the flight concerned.
- 41 In the light of such an objective, that regulation cannot be regarded as forming a legal basis for requiring the reimbursement, be it only partially and at a flat-rate, of components of the price the payment or amount of which are unrelated to that inconvenience and, consequently, to performance of the flight concerned.
- 42 It is for the referring court to determine whether or not the taxes and charges at issue in the main proceedings meet those requirements.
- 43 Accordingly, the answer to the third question is that Article 10(2) of Regulation No 261/2004 must be interpreted as meaning that the price of the ticket to be taken into consideration for the purposes of determining the reimbursement owed to that passenger, where he is downgraded on a flight, is solely the price of the flight itself, to the exclusion of taxes and charges indicated on that ticket, as long as neither the requirement to pay those taxes and charges nor their amount depends on the class for which that ticket has been purchased.

Costs

- 44 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. **Article 10(2), read in conjunction with Article 2(f), 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 where a passenger is downgraded on a flight, the price to be taken into account in determining the reimbursement for the passenger affected is the price of the flight on which he was downgraded unless that price is not indicated on the ticket entitling him to transport on that flight, in which case it must be based on the part of the price of the ticket corresponding to the quotient resulting from the distance of that flight and the total distance which the passenger is entitled to travel.

- 2. Article 10(2) of Regulation No 261/2004 must be interpreted as meaning that, the price of the ticket to be taken into consideration for the purposes of determining the reimbursement owed to that passenger, where he is downgraded on a flight, is solely the price of the flight itself, to the exclusion of taxes and charges indicated on that ticket, as long as neither the requirement to pay those taxes and charges nor their amount depends on the class for which that ticket has been purchased.**

[Signatures]