

WORKSHOP SESSION

Case-Study - Compensation for delayed flights?

The plaintiff booked a package holiday to Spain with a **tour operator**. This included, amongst other things, two flights for the outward journey: The first flight (Flight 1) from Hamburg was meant to land at 4:30pm in Las Palmas. The connecting flight (Flight 2) was scheduled to leave for Fuerteventura at 5:30pm.

Flight (1) was operated by the **defendant, airline X**. Flight (2) was operated by **another airline Y**.

Flight (1) landed with a delay of approximately 20 minutes. The plaintiff missed the connecting flight to Fuerteventura. The plaintiff arrived at the holiday destination roughly 14 hours late.

On 1st of February 2016, the plaintiff took **airline X, responsible for Flight (1)**, to court for the delay for compensation to the amount of €400 pursuant to the Air Passenger Act ([Regulation \(EC\) 261/2004](#) of the European Parliament and of the Council) regarding common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations, or long delays of flights.

According to Art. 7(1)b : ...Where reference is made to this Article, passengers shall receive compensation amounting to [...] 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. ...

The local court dismissed the claim, and an appeal was unsuccessful. The court of appeal did not agree that there had been a delay of three hours or more, as required by the provisions of Article 7(1)b of the Regulation. Flight (1) was only delayed by 20 minutes. The defendant, the airline responsible for Flight (1), was not responsible for the total delay, as it did not operate the connecting flight. It also had no influence on the selection of the flights. The flights were compiled by the tour operator with which the plaintiff booked the package holiday. The plaintiff's claim for damages must be addressed to the tour operator.

According to the ECJ, a compensation claim may only be made in the event of arriving at the final destination three or more hours late (ECJ, judgement of 19 November 2009 – [Joined cases C-402/07 and C-432/07](#)). For direct connecting flights, the final destination is the destination of the last flight. In its judgement of 26 February 2013 - [C-11/11](#), the ECJ dealt with the question of whether a claim for compensation required the same airline that caused the delay to have issued a ticket (or booking confirmation) for both flights.

An appeal on points of law was lodged against the solution of the appellate court. During these proceedings, the need to request for a preliminary ruling by the Court of Justice of European Union is debated.

Questions/Task:

- I. **Is a reference for a preliminary ruling to be provided by the competent court?**
- II. **If yes: How should the question to be submitted be formulated?**

ANNEX

Summary of Case C-11/11

Facts:

Mrs Folkerts booked flights from Bremen to Asunción, via Paris and São Paulo. All flights were operated by Air France.

The departure of the flight from Bremen to Paris was delayed. Therefore, Mrs Folkerts, who already had her boarding cards for the entire journey on departure from Bremen, missed the connecting flight from Paris to São Paulo. She was re-booked by Air France on to a later flight to São Paulo. Because of her late arrival in São Paulo, Mrs Folkerts also missed the connecting flight to Asunción. The delays of the single flights were all shorter than stipulated in Art. 6(1) of Regulation No 261/2004. But the final arrival in Asunción was 11 hours after the originally scheduled arrival time.

At first instance, and then on appeal, Air France was ordered to pay Mrs Folkerts damages, including, in particular, a sum of EUR 600 under Article 7(1)(c) of Regulation No 261/2004.

Air France then brought an appeal on a point of law before the Bundesgerichtshof (German Federal Court of Justice).

In the Bundesgerichtshof's view, the question of whether the right to compensation advanced by Mrs Folkerts is well founded depends on whether Article 7(1) of Regulation No 261/2004 may be relied on even where there is no delay within the terms of Article 6(1) of that regulation.

Question addressed to the CJEU:

1. Does a passenger have a right to compensation under Article 7 of Regulation No 261/2004 in the case where departure of his flight was delayed for a period which is below the limits specified in Article 6(1) of that regulation, but arrival at the final destination was at least three hours later than the scheduled arrival time?

Operative part of CJEU judgment:

In the case of directly connecting flights, it is only the delay beyond the scheduled time of arrival at the final destination, understood as the destination of the last flight taken by the passenger concerned, which is relevant for the purposes of the fixed compensation under Article 7 of Regulation No 261/2004.