

Extended rights for passengers of connecting flights outside EU territory

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On 31 May 2018 the European Court of Justice (ECJ) issued a decision regarding the scope of Article 3(1)(a) of EU Regulation 261/2004. **(1)** With its decision on the applicability of the regulation to connecting flights departing from an airport situated outside an EU member state, the ECJ has countered the longstanding position of the Federal Court of Justice and overruled the established case law in Germany.

Facts

The passenger, Ms Claudia Wegener, booked a flight with Royal Air Maroc from Berlin (Germany) to Agadir (Morocco), with a stopover and change of aircraft in Casablanca (Morocco). She checked in for all of her journey's flights at the airport in Berlin. On arrival in Casablanca, she presented herself for boarding the aircraft destined for Agadir. Royal Air Maroc refused to allow her to board and informed her that her seat had been reassigned to another passenger. Wegener eventually boarded another Royal Air Maroc aircraft and arrived in Agadir four hours after the initial scheduled time of arrival. Royal Air Maroc refused to pay compensation according to the EU Air Passenger Rights Regulation.

Wegener brought a claim to the Wedding District Court, but the court dismissed the claim on the grounds that she was not entitled to claim compensation under the EU regulation, because the flight originated outside the European Union.

Wegener subsequently appealed to the Berlin District Court. The court stayed the proceedings and referred the question of whether the flight from Berlin to Agadir with a stopover in Casablanca was a single flight within the meaning of EU Regulation 261/2004 to the ECJ.

Considerations

EU Regulation 261/2004 applies to passengers departing from an airport situated within an EU member state. The question therefore arises as to whether two connecting flights which were booked as a single trip can be considered as a single flight when the first flight departs from an EU member state and has a stopover and a change of aircraft within a third state in order to depart as a connecting flight to its final destination.

Decision

The ECJ ruled that EU Regulation 261/2004 applied to a passenger transport affected under a single booking and comprising, between its departure from an airport situated within an EU member state and its arrival at an airport situated within a third state, a scheduled stopover outside the European Union with a change of aircraft. The two flights must therefore be considered as a single unit.

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The court argued that the 'final destination' concept is defined as the destination on the ticket presented during check-in. It follows from the term 'last flight' that the concept of 'connecting flight' must be understood as referring to two or more flights constituting a whole for the purposes of the right to compensation. This applies when two or more flights are booked as a single unit. Moreover, none of the provisions in the regulation render the classification as connecting flight subject to the condition that all the flights included were affected aboard the same aircraft.

Comment

The judgment presents a major change of case law in Germany that will particularly affect non-European airlines based outside EU territory.

Before the ECJ judgment, the Federal Court of Justice had ruled that the applicability of EU Regulation 261/2004 for each flight should be examined separately, even if the flights were operated by the same airline and were booked together (eg, BGH X ZR 12/12 and BGH X ZR 14/12). Therefore, the regulation did not apply to connecting flights departing from within a third state, even if the first flight departed from within an EU member state, provided that the flight irregularity occurred exclusively on the second flight.

With its judgment, the ECJ has extended passenger rights even further by ignoring the principle of territoriality. If the regulation's applicability is assumed for the connecting flight, then all rights stipulated within the regulation might be considered applicable (eg, the right to care and the right to information at a non-EU airport). Moreover, all cases pertaining to flight events that are not yet barred by a statute of limitations may be affected.

This latest decision will likely generate a wave of claims for air carriers.

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Endnotes

(1) European Court of Justice, C-537/17.

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