



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

29 September 2022*

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 16 – Compensation and assistance to passengers – Task of the national body responsible for the enforcement of that regulation – National legislation conferring on that body the power to order an air carrier to pay compensation due to a passenger – Charter of Fundamental Rights of the European Union – Article 47 – Right to seek remedy before a tribunal)

In Case C-597/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Budapest High Court, Hungary), made by decision of 27 October 2020, received at the Court on 12 November 2020, in the proceedings

Polskie Linie Lotnicze ‘LOT’ S.A.

v

Budapest Főváros Kormányhivatala,

THE COURT (Third Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, N. Jääskinen, M. Safjan, N. Piçarra and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 2 February 2022,

after considering the observations submitted on behalf of:

- Polskie Linie Lotnicze ‘LOT’ S.A., by S. Berecz and A. Csehó, ügyvédek,
- the Budapest Főváros Kormányhivatala, by G. Cziráky, legal adviser, and G. Tóth, acting as Agent,
- the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,

* Language of the case: Hungarian.

– the Netherlands Government, by K. Bulterman and J. Hoogveld, acting as Agents,
– the Polish Government, by B. Majczyna and J. Lachowicz, acting as Agents,
– the European Commission, by V. Bottka, L. Havas and K. Simonsson, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 28 April 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 16(1) and (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 the air carrier Polskie Linie Lotnicze ‘LOT’ S.A. (‘LOT’) and Budapest Főváros Kormányhivatala (Consumer Protection Inspectorate of the Budapest Metropolitan Government Office, Hungary) (‘the Consumer Protection Inspectorate’) concerning the decision by which the latter ordered LOT to pay compensation under Article 7 of Regulation No 261/2004.

Legal context

European Union law

- 3 Recitals 1, 2, 4, 21 and 22 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.
 - ...
 - (21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.

(22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.’

4 Article 5 of the regulation, headed ‘Cancellation’, provides, in paragraphs 1 and 3 thereof:

‘1. In case of cancellation of a flight, the passengers concerned shall:

...

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

...

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

...

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.’

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

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

(a) EUR 250 for all flights of 1 500 kilometres or less;

(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;

(c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger’s arrival after the scheduled time.’

6 Article 12 of that regulation, entitled ‘Further compensation’, states, in paragraph 1 thereof:

‘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.’

7 Article 16 of Regulation No 261/2004, headed ‘Infringements’, is worded as follows:

‘1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights

of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.

2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.'

Hungarian law

- 8 Under Article 43/A(2) of the fogyasztóvédelemről szóló 1997. évi CLV. törvény (Law No CLV of 1997 on consumer protection) of 15 December 1997 (*Magyar Közlöny* 1997/119., p. 9558; 'the Law on Consumer Protection'):

'The consumer protection authority – following consultation, where necessary, with the civil aviation authority – shall be responsible for enforcing [Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ 2017 L 345, p. 1)] in the event of infringements of Regulation No 261/2004 within the [European Union].'

- 9 Under Article 47(1)(c) and (i) of the Law on Consumer Protection, the consumer protection authority has the power to require the undertaking concerned to put an end to any identified irregularities or shortcomings within a specified period and to impose a 'consumer protection' fine.

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

- 10 Following a delay of more than three hours of their flight from New York (United States of America) to Budapest (Hungary), a number of passengers brought the matter before the Consumer Protection Inspectorate asking it to order LOT to pay them, by way of redress for having infringed Article 5(1)(c) of Regulation No 261/2004, the compensation provided for in Article 7 thereof.
- 11 By decision of 20 April 2020, that inspectorate found that, inter alia, Article 7(1)(c) of Regulation No 261/2004 had been infringed and ordered LOT to pay compensation in the amount of EUR 600 to each passenger concerned.
- 12 Taking the view that the Consumer Protection Inspectorate does not have the power to order the payment of such compensation, LOT challenged that decision before the Fővárosi Törvényszék (Budapest High Court, Hungary), namely the referring court in the present case.
- 13 Relying on the Opinion of the Advocate General in Joined Cases *Ruijsenaars and Others* (C-145/15 and C-146/15, EU:C:2016:12), LOT claims that the relationship between an air carrier and a passenger is civil in nature. Accordingly, the Hungarian practice allowing the Consumer Protection Inspectorate to order air carriers to pay compensation on the basis of Regulation No 261/2004 deprives Hungarian civil courts of their jurisdiction.

- 14 By contrast, the Consumer Protection Inspectorate considers that it has jurisdiction by reason of Article 16(1) and (2) of that regulation. According to that inspectorate, the Law on Consumer Protection provides that it is responsible for enforcing Regulation 2017/2394 in the event of infringement of the provisions of Regulation No 261/2004. In that context, it has the power to impose a ‘consumer protection’ fine.
- 15 The referring court has doubts as to whether the Consumer Protection Inspectorate may order an air carrier to pay compensation, within the meaning of Article 7 of Regulation No 261/2004, for infringement of the provisions of that regulation.
- 16 According to that court, it is not possible to determine from the operative part of the judgment of 17 March 2016, *Ruijsenaars and Others* (C-145/15 and C-146/15, EU:C:2016:187), whether the Court departed from the interpretation of Article 16 of Regulation No 261/2004 proposed by the Advocate General in his Opinion in the cases which gave rise to that judgment. According to that interpretation, a national body to which an individual complaint has been made by an air passenger cannot take enforcement action against the air carrier concerned in order to compel it to pay the compensation due to that passenger under that regulation.
- 17 Moreover, it considers that that judgment is not directly applicable to the main proceedings. In Hungary, unlike the situation at issue in that judgment, the Consumer Protection Inspectorate systematically orders air carriers to pay the compensation provided for in Regulation No 261/2004, even though it is also possible to bring an action before the civil courts.
- 18 However, the referring court states that although the Consumer Protection Inspectorate has general jurisdiction over infringements of the provisions of Regulation No 261/2004, there is no specific provision in Hungarian legislation permitting that inspectorate to take enforcement action to compensate passengers in the event of non-compliance with that regulation.
- 19 It is in those circumstances that the Fővárosi Törvényszék (Budapest High Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 16(1) and (2) of Regulation [No 261/2004] be interpreted as meaning that where an individual complaint has been made by a passenger to the national body responsible for the enforcement of that regulation, that body cannot compel the airline in question to pay the compensation due to the passenger under [that] regulation?’

Consideration of the question referred

- 20 By its question, the referring court asks, in essence, whether Article 16 of Regulation No 261/2004 must be interpreted as meaning that a national body responsible for the enforcement of that regulation may compel an air carrier to pay compensation, within the meaning of Article 7 of that regulation, due to passengers under that regulation, where an individual complaint has been made to that national body by a passenger.
- 21 According to the Court’s settled case-law, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part.

- 22 As regards, in the first place, the wording of Article 16 of Regulation No 261/2004, it is clear from the wording of paragraph 1 of that article that each Member State is required to designate a body responsible for the enforcement of that regulation as regards flights from airports situated on its territory and flights from a third country to those airports and that body must take, where appropriate, the measures necessary to ensure that the rights of passengers are respected.
- 23 Article 16(2) of Regulation No 261/2004 states, for its part, that each passenger may complain to any body designated under paragraph 1 of that article, or to any other competent body designated by a Member State, about an alleged infringement of that regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.
- 24 In the light of the wording of those provisions, the Court has held that the complaints referred to in Article 16(2) of Regulation No 261/2004 are to be regarded as a form of alert signal intended to contribute to the proper application of the regulation in general, without the body designated being required to act on such complaints in order to guarantee each individual passenger's right to obtain compensation (judgment of 17 March 2016, *Ruijsenaars and Others*, C-145/15 and C-146/15, EU:C:2016:187, paragraph 31).
- 25 Similarly, as regards the term 'sanction' as used in Article 16(3) of Regulation No 261/2004, the Court has held, in the light of recital 21 of that regulation, that it referred to the measures adopted in response to the infringements which the body identifies in the course of its general monitoring activities provided for in Article 16(1) of that regulation, not to administrative enforcement action to be taken in each individual case (judgment of 17 March 2016, *Ruijsenaars and Others*, C-145/15 and C-146/15, EU:C:2016:187, paragraph 32).
- 26 However, there is nothing in the wording of Article 16 of Regulation No 261/2004 to prevent a Member State from conferring such a power of enforcement on a body responsible for enforcing that regulation. By contrast, as the Advocate General observes in point 36 of his Opinion, it follows from the wording of that article that the Member States have discretion as to the powers which they wish to confer on their national bodies for the purpose of protecting passengers' rights.
- 27 Moreover, the Court has stated that in view of, inter alia, the discretion enjoyed by the Member States in the allocation of the powers with which they intend to endow the bodies referred to in Article 16(1) of Regulation No 261/2004, it is open to Member States, in order to remedy inadequate protection for air passengers, to empower those bodies to adopt measures in response to individual complaints (see, to that effect, judgment of 17 March 2016, *Ruijsenaars and Others*, C-145/15 and C-146/15, EU:C:2016:187, paragraph 36).
- 28 In the second place, such an interpretation is also supported by the context of Article 16 of Regulation No 261/2004.
- 29 In that regard, it is apparent from Article 12 and Article 16(2) of that regulation, read in the light of recital 22 thereof, that the sole limitation on the competence of the bodies designated to ensure the enforcement of that regulation is the right of air passengers to seek before a court further compensation in addition to the fixed compensation provided for in Article 7 of Regulation No 261/2004.

- 30 While the fixed sums set out in Article 7(1) of Regulation No 261/2004 constitute standardised and immediate compensation such as to avoid the inconvenience inherent in the bringing of actions for damages before the courts having jurisdiction, the additional compensation provided for in Article 12 of that regulation relates to damage specific to the air passenger concerned and which is meant to be assessed subsequently on an individual basis (see, to that effect, judgment of 29 July 2019, *Rusu*, C-354/18, EU:C:2019:637, paragraphs 28 and 36).
- 31 By contrast, the fixed amounts set out in Article 7(1) of Regulation No 261/2004 are intended to provide compensation only for the damage that is almost identical for every passenger concerned (see, to that effect, judgment of 29 July 2019, *Rusu*, C-354/18, EU:C:2019:637, paragraph 30 and the case-law cited).
- 32 The determination of those amounts does not require an individual assessment of the scale of damage caused since, first, the amount of the fixed compensation set out in Article 7 of Regulation No 261/2004 is calculated on the basis of the distance covered by the flight concerned, taking account of the last destination of the passenger (see, to that effect, judgment of 7 September 2017, *Bossen and Others*, C-559/16, EU:C:2017:644, paragraph 17), and, second, the actual arrival delay in excess of three hours is not taken into account in calculating that amount (see, to that effect, judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 54).
- 33 Thus, as the Advocate General stated in point 46 of his Opinion, both passengers and carriers can easily identify the amount of compensation due. The same applies, a fortiori, to the bodies designated on the basis of Article 16(1) of Regulation No 261/2004.
- 34 Furthermore, while restricting the jurisdiction to hear disputes relating to compensation under Article 7(1) of Regulation No 261/2004 to courts alone makes it possible, in the case of the assessment of a same individual situation, to prevent any divergence in assessment that is detrimental to the rights of air passengers by, on the one hand, the bodies referred to in Article 16(1) of Regulation No 261/2004 and, on the other, the national courts adjudicating on individual actions (see, to that effect, judgment of 17 March 2016, *Ruijsenaars and Others*, C-145/15 and C-146/15, EU:C:2016:187, paragraph 34), such a risk can also be mitigated by an adequate relationship between administrative and judicial proceedings.
- 35 As the Advocate General stated in point 51 of his Opinion, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules necessary for that purpose.
- 36 That being said, conferral of a power of enforcement on a national body referred to in Article 16(1) of Regulation No 261/2004 cannot, in any event, deprive either passengers or air carriers of the possibility of bringing a legal action before the competent national court (see, to that effect, for passengers, judgment of 22 November 2012, *Cuadrench Moré*, C-139/11, EU:C:2012:741, paragraph 23).
- 37 Since the claim for compensation of an air passenger under Article 7(1) of Regulation No 261/2004 amounts to the enforcement of a right guaranteed by EU law, Article 47 of the Charter of Fundamental Rights of the European Union confers on such a passenger the right to an effective remedy and the right of access to a court, which may, where appropriate, request a preliminary ruling from the Court of Justice on the basis of Article 267 TFEU. Similarly, an air carrier must be able to bring legal proceedings against the decision by which the national body

referred to in Article 16(1) of Regulation No 261/2004, to which an individual complaint has been made by an air passenger, compelled it to pay the compensation due to that passenger under that regulation.

- 38 In the third place, the interpretation of Article 16 of Regulation No 261/2004, set out above, is supported by the aims pursued by that regulation, as set out in recitals 1, 2 and 4. That is, first, the aim consisting in ensuring a high level of protection for passengers, taking full account of the requirements of consumer protection in general and, second, that of strengthening the rights of passengers by reducing the trouble and inconvenience to passengers caused by long delays of flights or their cancellation.
- 39 The specific aim of the fixed compensation granted under Regulation No 261/2004 is precisely to compensate, in a standardised and immediate manner, for damage consisting in a loss of time equal to or in excess of three hours underlying such a delay, which constitutes ‘inconvenience’ within the meaning of that regulation, without the passengers concerned having to suffer the inconvenience inherent in the bringing of actions for damages (see, to that effect, judgment of 29 July 2019, *Rusu*, C-354/18, EU:C:2019:637, paragraph 28).
- 40 Conferring a power of enforcement on a national body designated on the basis of Article 16(1) of that regulation undoubtedly contributes to preventing passengers from having to suffer the inconvenience inherent in the bringing of proceedings before the courts. Such a power makes it possible, for the sake of simplicity, speed and effectiveness, mentioned by the Advocate General in point 48 of his Opinion, to ensure a high level of protection for air passengers while preventing the courts from being clogged up in the light of the extremely high number of claims for compensation.
- 41 In the light of all the foregoing considerations, the answer to the question referred is that Article 16 of Regulation No 261/2004 must be interpreted as meaning that the Member States have the power to authorise the national body responsible for the enforcement of that regulation to compel an air carrier to pay compensation, within the meaning of Article 7 of that regulation, due to passengers under that regulation, where an individual complaint has been made to that national body by a passenger, provided that it is open to that passenger and that air carrier to bring proceedings before the courts.

Costs

- 42 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:

Article 16 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 Member States have the power to authorise the national body responsible for the enforcement of that regulation to compel an air carrier to

pay compensation, within the meaning of Article 7 of that regulation, due to passengers under that regulation, where an individual complaint has been made to that national body by a passenger, provided that it is open to that passenger and that air carrier to bring proceedings before the courts.

[Signatures]