



C-402/07 and C-432/07 Sturgeon v Condor Flugdienst GmbH and Böck and Lepuschitz v Air France, judgments of 19 November 2009

The Court rules that air carriers are obliged to compensate their customers in the event of significant delay in flights.

Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation of flight provides in particular for the obligation for air carriers to compensate passengers, on a lump-sum basis, in the event of cancellation of a flight followed by arrival at destination by a replacement flight with a delay of more than three hours. Air carriers can escape this obligation only by relying on the existence of "extraordinary circumstances". However, Regulation (EC) No 261/2004 does not provide explicitly for the same obligation to compensate in the case of the flight merely being delayed.

The origin of these two joined cases is the action by passengers against their air carriers on the grounds of substantial delays in their flights (25 hours in one case and nearly 22 hours in the other). The courts before which these actions have been brought referred the question to the Court of Justice in particular of whether very long flight delays can be assimilated to flight cancellations giving rise to lump-sum compensation for passengers.

The Court firstly specifies that a delayed flight cannot be considered to have been cancelled, irrespective of the length of this delay, when, apart from the scheduled departure time, all the other elements of the flight, including the itinerary, remain unchanged.

Nevertheless, the Court recognises the same right to the same compensation for passengers of flights delayed by more than three hours as that explicitly provided for passengers of cancelled flights. On the one hand, the Court bases this conclusion on the recitals of the Regulation, in which the legislature links the question of compensation to that of a long delay, whilst indicating that the Regulation seeks to ensure a high level of protection for passengers regardless of whether they are denied boarding or whether their flight is cancelled or delayed. On the other hand, the Court interprets the relevant provisions of the Regulation in the light of the general principle of equal treatment. According to the Court, the situation of passengers who have reached their destination with a delay of more than three hours as a result of a cancellation or a mere delay of their flight is comparable from the point of view of damage suffered. Consequently, both categories of passengers must be able to benefit from an equivalent right to compensation.

Finally, the Court recalls that, although air carriers can be exempt from their obligation to compensate their customers in the event of "extraordinary circumstances", a technical problem in an aircraft is not covered by that concept unless that problem stems from events which are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control.