



ADR In the Aviation Sector and the Sector of Tour Operators



AIR PASSENGER RIGHTS OR WRONGS?

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Alternative Dispute Resolution in the Aviation Sector
and the Sector of Tour Operators

AIR PASSENGER RIGHTS OR WRONGS?

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Regulation 1008/2008 of 24 September 2008 on the common rules for operation of air services in the Community

- Air carriers operating from a community airport must:
 - indicate the final amount of the ticket i.e. price displayed on the website should be the final amount consumer has to pay

In addition:

Consumer should be given breakdown of the price elements:

(a) basic fare

(b) the taxes

(c) airport charges

Both (b) and (c) on a per passenger basis and directly traceable to third parties (airports, governments)

(d) other charges – by airlines themselves

(f.i. Security fees other than under (c), war premium, environmental taxes,..)

Optional price supplements

f.i. Luggage, cancellation insurance, use of credit cards

must be communicated:

- in a clear and transparent way
- at the start of the booking process
- acceptance on an “opt-in” basis

Regulation 80/2009 of January 14, 2009 on a Code Of Conduct for Computer Reservation Systems

- Obligation to display «all-inclusive» prices => Airfares must include all applicable taxes, charges and fees
- Flights involving stops on route must be defined
- Actual operator of the flight must clearly be defined
- Flights operated by carriers that are on the blacklist (Reg. 211/2005) must specifically be identified

Regulation 1107/2006 of July 5th, 2006 concerning Passengers with Reduced Mobility (PRMs)

Intent: Tries to ensure that passengers with reduced mobility have the same opportunities as other citizens to travel by air

➤ Applies to airlines operating in the European Union

non-discriminatory treatment of people with reduced mobility
ground assistance in all airports located in the EU and the setting up of
standards
ground assistance

right of reimbursement and re-routing in case of denied boarding

airlines and the tour operators under an obligation to publish their policy
for passengers with reduced mobility

Directive on Package Travel 90/314 of June 13th, 1990

New proposal expected during second half of 2011

**Unfair business-to-consumer
Commercial Practices Directive (UCP)
Directive 2005/ 29 EC amending...
of May 11th, 2005**

Judgment of the Court of 12 May 2011
Konsumumentenombudsmannen v. Ving Sverige

- entry-level price

Regulation 211/2005 of December 14th, 2006 on Carriers with an Operating Ban

I. Publication of a community list of carriers which are banned

II. Inform passengers of the identity of the operating carrier:

- Upon reservation or
 - At the latest at the time of check-in if the operating carrier was not known beforehand or if it was changed in the meantime
-
- In case the operating carrier appears on the black list. Passenger has the right :
 - to be re-booked
 - or if only advised at the last minute
 - to be reimbursed for the full cost of the ticket
 - to be re-routed to his final destination at the earliest opportunity

Regulation 261/2004 of February 11th, 2004 on compensation and assistance in the event of denied boarding, cancellation or long delays.

- Overbooking = normal business practice
- Regulation 295/91 of February 4th, 1991 establishing common rules for denied boarding compensation
 - Financial compensation in case of denied boarding of 150 or 300 euros, cannot exceed what the passenger paid for the ticket

- 2000: campaigning by the Commission to make passengers aware of their rights (posters in community airports)
- 2001: denied boarding still too high so the Commission posted a new proposal
- **Regulation 261/2004 came into force on February 16th, 2005!**

airport

in a community carrier

in at the time indicated or at least

not FFP)

to the public

OPERATING CARRIER!

Regulates:

1. Denied boarding – art. 4
2. Cancellations – art. 5
3. Delays – art. 6

3 possible remedies:

- Article 7 - right of compensation
- Article 8 - reimbursement or re-routing
- Article 9 - assistance

Article 7 - right of compensation

Flights of less than 1500 km

Flights between 1500 – 3500 km

Flights over 3500 km

2 hours/ 3 hours/ 4

Article 8 - reimbursement or re-routing

Passenger has the right to ask for:

- reimbursement of the ticket
- a return flight
- re-routing

Article 9 – assistance

The passenger shall be offered free of charge:

- Meals and refreshments
- Hotel accomodation if necessary
- Transport between airport and hotel
- Two telephone calls, telex, fax or emails

DENIED BOARDING	
➤ call for volunteers	Article 8
➤ against your will	Articles 7 + 8 + 9

CANCELLATION
Article 8 + Article 9 + Article 7 UNLESS passengers are:
➤ Informed 2 weeks before departure
➤ Informed between 2 weeks and 7 days before departure and re-routed to depart no more than 2 hours earlier and to arrive no more than 4 hours after scheduled arrival
➤ Informed less than 7 days before departure and rerouted to depart no more than 1 hour earlier and to arrive no more than 2 hours later

DELAY of at least...	
2 hours – flights of 1500 km	Article 9
3 hours – flights between 1500-3500 km	
4 hours – flights for more than 3500 km	
5 hours	Article 9 + 8

- **Regulation 261/2004 = REGULATION**
 - **Directly applicable in Member States**
 - **National Courts**

- **National enforcement bodies – article 16**

CASE LAW OF ECJ

IATA and ELFAA v. Department of Transport C-344/04, October 1st, 2006

- **Question:** Is Reg. 261/2004 consistent with Article 19 (delay) of the Montreal Convention?
 - Montreal Convention: defense if carrier proves that it took all necessary measures

- **Court of Justice:** Delay causes 2 types of damage:
 - (1) damage identical to all passengers (2) individual damage
 - Montreal deals with damages by way of redress
 - Regulation deals with standardized and immediate compensatory measures.
 - Regulation works at an earlier stage (before the flight)

Wallentin – Hermann v. Alitalia – Linee Aeree Italiane Case C-549/07; December 22nd, 2008

➤ Question:

- cancellation: interpretation of “extraordinary circumstances”
- are technical problems extraordinary circumstances

➤ Court:

- “extraordinary = event which is not inherent in the normal exercise of the activity of the air carrier and is beyond its control
- In light of the degree of sophistication of aircraft, technical problems which come to light during maintenance of aircraft or on account of failure to carry out such maintenance are not extraordinary circumstances
- burden of proof is on the carrier.

‘Even if he had used all the resources and financial means at his disposal, he clearly would not have been able to prevent the extraordinary circumstances, unless he had made intolerable sacrifices’

Sturgeon v. Condor (Bock v. Air France)
Case C-402/07 & C-432/07
November 19th, 2009

- Preliminary question on the difference between delay and cancellation.
- **Court** reformulated the question and posed a second question →
«whether passengers whose flights are delayed may for the purpose of the application of the right to compensation be treated as passengers whose flights are cancelled»
- Passengers whose flights are delayed suffer the same type of damage as those whose flights are canceled.
Similar inconvenience and frustration.
Equal treatment => compensation is due
Court decided: 3 hours of delay equals cancellation.

Court declared passenger rights far beyond the wording of the Regulation

**Eglitis & Ratnieks v. Latvijas Republikas Ekonomikas Ministrija &
Air Baltic Corporation AS (intervening party)
Case C-294/10; May 12th, 2011**

- **Question:** Whether the carriers are under an obligation to organize their resources so to provide “a minimum reserve time” after the scheduled departure and be able to operate the flight after extraordinary circumstances have come to an end.
- **Court:** we cannot answer this in general and without distinction. The question if all reasonable measures were taken to provide for a minimum reserve time, cannot be resolved in the same way for all carriers in all situations when extraordinary circumstances arise.
- The ability of a carrier to operate the flight in face of extraordinary circumstances must be carried out in a way that does not result in the carrier making “intolerable sacrifices”

Volcanic Ash Cloud

- 14 April 2010: eruption of Eyjafjallajökull
- 15 April – 21 April: Air space was closed and thousands of passengers were stranded
- Considered as an extraordinary event → no compensation is due (**Article 7**)
 - BUT duty of care and assistance (**Article 9**) and duty to re-route stays! (**Article 8**)

Shortcomings as defined by the industry:

- Airlines believe they are excessively affected
Compensation does not bear a relation to the ticket price
- No transparency, no guidance on **delay** versus **cancellation**
- What about connecting flights
- Overlapping with foreign consumer protection measures

- Delay and cancellations: Multiple causes and only a few are under the legal or practical control of the carriers
- Revision of rules in case of crisis (such as cabin crew strikes, volcanic ash clouds, air traffic control strikes)
- Need for benchmark standard of behaviour
- Need to be brought in line with passenger rights in rail Reg. 1371/2007; maritime and inland waterways Reg. 1177/2010, as well as for bus and coaches Reg 181/2011



QUESTIONS?

THANK YOU!