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Air transport: The judgment of the European Court of Justice of 29 September 2022, Case C-597/20, LOT allows national bodies responsible for the enforcement of the Air Passenger Rights Regulation to have enforcement powers

On 29 September 2022, the European Court of Justice ("ECJ") issued its judgment in case C-597/20, LOT, clarifying the scope of the functions of the national bodies responsible for the enforcement 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 ("**Regulation 261/2004**").

This judgment is relevant to the air transport sector because it enables Member States to grant coercive powers to national bodies responsible for the enforcement of Regulation 261/2004, allowing them to require airlines to pay compensation to passengers, without the need to claim it before a court of law.

In this legal briefing, we will analyse the judgment and its possible consequences for the sector.

1. The main proceedings and the question referred for a preliminary ruling

The case decided by the ECJ arose in the context of a dispute between an air carrier, Polskie Linie Lotnicze, (hereinafter "**LOT**"), and the consumer protection office in Budapest.

Following a delay of more than three hours to their flight from New York, passengers asked the Hungarian consumer protection office, the Hungarian body responsible for the enforcement of Regulation 261/2004, to require LOT to pay the compensation provided for in the Regulation. The consumer protection office did indeed find a breach of the Regulation and ordered LOT to pay compensation amounting to 600 euros to each passenger concerned.

The Hungarian regulation specifically provided for the power to compel the company to put an end to irregularities and to impose "consumer protection fines". LOT challenged this decision of the consumer protection office before the "General Court of the Capital, Hungary" on the grounds that the consumer protection office did not have the authority to enforce the payment of such compensation, arguing that only the courts were authorised to do so.

The "General Court of the Capital, Hungary" asked the ECJ whether the consumer protection office as the body responsible for the enforcement of Regulation 261/2004 could require an airline company to pay compensation for the breach of the provisions of that Regulation following an individual complaint by a passenger.

2. Analysis of the ECJ judgment in light of its previous case law

This is not the first time that the ECJ has issued a judgment on the competence of national bodies responsible for the enforcement of Regulation 261/2004. In fact, the ECJ in its judgment of 17 March 2016 in Joined Cases C-145/15 and C-146/15, Ruijsenaars and others, stated that such bodies were not obliged to impose coercive fines on an airline following an individual complaint by an aggrieved passenger.

In that case, the ECJ held that passenger complaints to the relevant national body should more properly be considered complaints that contribute to the correct application of the Regulation in general¹. Consequently, Member States have a margin of discretion in conferring powers on these bodies responsible for the enforcement of the Regulation. Thus, it was stated that Regulation 261/2004 did not impose an obligation on such national bodies to take enforcement action following individual passenger complaints, but left open the question of whether such enforcement powers, if granted by the Member State, were compatible with EU law, and, in particular, with Article 16 of Regulation 261/2004.

In the judgment of 29 September 2022, the ECJ built on its previous case law, noting the margin of discretion that Member States have when conferring powers on the relevant bodies, but clarified that, although the Regulation does not oblige national bodies to take coercive measures following individual complaints from passengers, neither does it prohibit these bodies from having this coercive power. In other words, it considers any legislation that grants such bodies executive powers compatible with EU law, with the only limit being that such decisions may be subject to judicial review.

The ECJ reached this conclusion on the basis of a threefold argument:

Firstly, the wide margin of discretion available to Member States under Article 16 of Regulation 261/2004.

Secondly, the context of Article 16 of Regulation 261/2004. Thus, the ECJ has held that the only limit to the competence of the designated bodies is the right to request additional compensation provided for in Article 12 of Regulation 261/2004. The ECJ explained that the conferring of this power does not deprive the courts of their jurisdiction, because these coercive measures include standardised and immediate compensation provided for in the Regulation in order to compensate practically identical damage suffered by all passengers concerned and thus avoid the inconvenience of claiming compensation before the relevant courts.

Thirdly, consistency with the objectives of the Regulation. Thus, one of the fundamental objectives of the Regulation is to ensure a high level of protection for passengers, taking into account the general requirements of consumer protection and the objective of strengthening passenger rights by reducing the disruption and inconvenience caused by long delays or cancellations of flights. Such coercive powers enable passengers to avoid having to suffer the inconvenience of legal action, since it is a lump sum compensation, and avoids overwhelming the courts, given the potentially large number of applications.

The ECJ concluded by stressing that the only limit lies in the need to ensure that passengers and airlines can always bring proceedings before the relevant court under the procedures established by national law.

3. Analysis of the judgment for the sector. Regulation in Spain

As with all ECJ judgments, the doctrine is binding on all Member States, both for the authorities and for citizens and companies.

In this case, however, the judgment does not appear to require any changes to the existing regulatory framework, because it again recognises the discretion of Member States in establishing the powers of their regulatory bodies, provided that there is the option of judicial review.

¹ Judgment of the ECJ of 17 March 2016, Ruijsenaars and others, C-145/15 and C-146/15, EU:C:2016:187, paragraph 31.

As far as Spain is concerned, the national body responsible for the enforcement of Regulation 261/2004 is the Spanish Aviation Safety Agency ("**AESA**")² and an ad hoc ADR procedure has been provided by Order TMA/201/2022³. Specifically, Article 18 states that AESA's decisions are binding on airlines, but enforcement must be sought before a judicial body if the airline has not complied with the decision. In addition, the Spanish regulation clearly establishes the option for both the passenger and the airline to go to court even after a decision has been issued by the Director of the Agency.

² Article 9 of Royal Decree 184/2008, of 8 February 2008, approving the Statute of the State Aviation Safety Agency, published in the Official State Gazette No. 39, of 14 February 2008.

³ Order TMA/201/2022, of 14 March, which regulates the procedure for alternative dispute resolution for air transport users concerning the rights recognised in the European Union regarding compensation and assistance in the event of denied boarding, cancellation or long delay, as well as in relation to the rights of disabled persons or persons with reduced mobility, published in the Official State Gazette No. 65, of 17 March 2022.

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