

- Regulation (EC) no. 861/2007 establishing a European Small Claims Procedure -
- Whether Small Claims Tribunal has jurisdiction over the matter -
- Regulation (EC) no. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights -
- Compensation: delay in flight -



**SMALL CLAIMS TRIBUNAL  
(EUROPEAN SMALL CLAIMS PROCEDURE)**

**ADJUDICATOR ADV. DR. KEVIN CAMILLERI XUEREB**

**Sitting of Friday, 22<sup>nd</sup> of September, 2017**

Claim Number: **2/2017**

**PETER PIETSCH**

*VERSUS*

**VUELING S.A.**

The Tribunal,

Having seen the Claim Form (Form A) filed by the claimant on the 14<sup>th</sup> March, 2017 whereby the same, in line with Regulation (EC) no. 861/2007, requested the Tribunal to condemn defendant company (a Spanish airline) to pay him the sum of eight hundred, fifty seven euros and thirty two euro cents (€857.32c) for the reasons explained under Section 8.1 of the Claim Form.

Having seen that the defendant company, although duly notified on the 20<sup>th</sup> of June, 2017, to date the same has not filed any response (Form C) in terms of Article 5(3) and/or 5(6) of Regulation (EC) no. 861/2007.

Took cognizance of all the acts and documents relating to the case and having noted that the claimant required no oral hearing (*vide* section 8.3 of the Claim Form).

Took cognizance of its decree dated the 6<sup>th</sup> of September, 2017 and having seen that the claimant has abided by the directives therein stipulated.

Examined the additional evidence submitted by the claimant, consisting, *inter alia*, of claimant's affidavit and Dr. Gertrude Edtstadtler-Pietsch's affidavit and also the relative translations in the English language as ordered in the Tribunal's decree of the 6<sup>th</sup> of September, 2017.

The Tribunal considers:

That claimant had booked a flight with defendant company for his wife (Dr. Gertrude Edtstadtler-Pietsch) and himself on the 9<sup>th</sup> of November, 2016 from Mallorca (VY3903) to Barcelona and from Barcelona (VY8744) to Malta and, on the 16<sup>th</sup> November, 2016 another flight from Malta (VY8745) to Barcelona and from Barcelona (VY3926) to Mallorca. On the 16<sup>th</sup> November, 2016, the flight Malta-Barcelona (VY8745) was delayed. The said flight left at 20:15 instead at 13:55 (approximately, six hour delay). Because of this delay the claimant and his wife did not manage the connecting flight Barcelona-Mallorca (VY3926), since this had already departed. Claimant and his wife had to spend the night at a hotel in Spain since on that evening there were no other flights to Mallorca. The next flight to Mallorca was on the subsequent day (VY3904). The claimant and his wife arrived in Mallorca on the 17<sup>th</sup> November, 2016 at 10:40.

Due to these events, claimant is demanding damages in line with Regulation (EC) 261/2004 in the amount of €800.00c because of the delay in the flight of 16<sup>th</sup> November, 2016 from Malta to Barcelona (VY8745). The said damages, as the claimant states in his affidavit, are "*compensation for both passengers*", namely himself and his wife, Dr. Gertrude Edtstadtler-Pietsch (i.e., €400.00c each passenger). Claimant is, additionally, demanding the compensation of the sum of €57.32c for taxi services expenses he and his wife had to incur while in Barcellona, as he describes in his affidavit. Thus, the total of compensation claimed by the claimant Peter Pietsch is in the amount of €857.32c.

The first question to be decided is whether this Tribunal has jurisdiction in terms of Regulation (EC) no. 861/2007 to take cognizance of the matter of these proceedings.

Notwithstanding no formal plea with respect to the jurisdiction of this Tribunal was raised by the defendant company, it is a codified tenet under Maltese Law [Article 774(b) of Chapter 12 of the Laws of Malta entitled "*Code of Organisation and Civil Procedure*"] that questions on the issue of jurisdiction may be raised *ex officio* by the court or tribunal seized with the matter. On this aspect, reference is made to the decision, among several others, in the names of **Montaldo Insurance Agency Ltd**

**noe v. Emanuel Micallef et** (Court of Appeal [inferior jurisdiction] of the 3<sup>rd</sup> of October, 2007).

Here the Tribunal points out that, *“Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted”* [Article 19 of Regulation (EC) no. 861/2007]. Therefore, notwithstanding the rights invoked by the claimant emanate from a European Union legal instrument, the procedural aspects of the proceedings are governed by the rules and principles of the territorial jurisdiction where the case was filed and the proceedings conducted.

According to Article 3 Regulation (EC) no. 861/2007, for the purposes of it, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized. As it is stated in Article 2(2) of the Regulation domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) no. 44/2001. As indicated by the claimant himself in Claim Form (Form A), he is domiciled in Germany (see section 5.1 of claim) and the defendant company is domiciled in Spain (see section 5.2 of claim). Claimant decided to file proceedings in Malta, being that country wherein the delay in the flight Malta–Barcelona (VY8745) occurred.

Therefore, this Tribunal is faced with a claimant who is domiciled in Germany, making a claim in Malta against an airline company domiciled in Spain. The question is whether the Maltese courts or tribunals have jurisdiction over such a claim.

In the Tribunal’s opinion, the place of the head office or the principal place of establishment of the airline concerned (in this case Spain) does not have the necessary close link to the contract. The operations and activities undertaken from that place, such as, in particular, the provision of an adequate aircraft and crew, are logistical and preparatory measures for the purpose of performing the contract relating to air transport and are not services the provision of which is linked to the actual content of the contract. The same is true with regard to the place where the contract for air transport was concluded and the place where the ticket was issued. The services the provision of which corresponds to the performance of the obligations arising from a contract to transport passengers by air are the checking-in and boarding of passengers, the on-board reception of those passengers at the place of take-off agreed in the transport contract in question, the departure of the aircraft at the scheduled time, the transport of the passengers and their luggage from the place of departure (in this case Malta) to the place of arrival (in this case Barcelona), the in-flight care of the passengers and, finally, the disembarkation of the passengers in safe conditions at the place of landing (in this case Barcelona) and at the time scheduled in that contract.

The only places which have a direct link to those services, provided in performance of obligations linked to the subject-matter of the contract, are those of the departure and arrival of the aircraft, the “places of departure and arrival” having to be understood as those agreed in the contract of carriage in question, made with one sole airline which is the operating carrier. In this case, the places of departure was Malta and that of arrival was Barcelona. The delay was in regard to the flight from Malta to Barcelona (VY8745). Each of these two places has a sufficiently close link of proximity to the material elements of the dispute and, accordingly, ensures the close connection between the contract and the court or tribunal having jurisdiction. Consequently, a claim for compensation following the cancellation of a flight may be brought, as a matter of choice on the part of the passenger concerned (i.e., the present claimant), before the court or tribunal having territorial jurisdiction over the place of departure or of arrival.

As already stated, claimant decided to file these proceedings in Malta on the basis of Malta being the place of departure of flight VY8745.

The Tribunal makes reference to the case of **Peter Rehder v. Air Baltic Corporation** [case C-204/08 of the 9<sup>th</sup> of July, 2009] which was a reference for a preliminary ruling of the European Court of Justice (ECJ) with respect to this specific query. The ECJ had decided as follows: *“The second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the case of air transport of passengers from one Member State to another Member State, carried out on the basis of a contract with only one airline, which is the operating carrier, the court having jurisdiction to deal with a claim for compensation founded on that transport contract and on 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, is that, at the applicant's choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract.”* [emphasis added]

In the light of the above considerations, the Tribunal deems that it has jurisdiction to take cognizance of the case since the passenger (i.e., claimant) filed the proceedings within the jurisdiction of the place of departure of the delayed flight (i.e., Malta).

The Tribunal now turns its attention to the merits of the case and considers as follows.

The “Flight Compensation Regulation (EC) no. 261/2004” [which repealed Regulation (EEC) no. 295/91, and which came into effect on the 17<sup>th</sup> February 2005) is a regulation in EU Law establishing common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations, or long delays of flights. It requires compensation of €250 to €600 depending on the flight distance for delays over 4 hours, cancellations, or being denied boarding from overbooking.

A long delay entitles passengers to the same compensation as in the case of a flight cancellation. The passenger is entitled to compensation if he reaches his/her final destination with a delay of three hours or more. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.

In the judgment in **Sturgeon & Others** (Joined Cases C-402/07 and C-432/07 *Sturgeon and Others* [2009] I-10923), the Court of Justice found that passengers whose flights are delayed may be treated the same way as those whose flights are cancelled as regards their right to compensation. Thus, the Court held that if passengers reach their final destination three hours or more after the arrival time originally scheduled, they may claim fixed compensation from the airline, unless the delay is caused by extraordinary circumstances.

The airline may defend itself by claiming, and proving, that the long delay was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier. In the present case no such evidence – suggesting any extraordinary circumstances – was tendered by the defendant company. The acts of the proceedings show also that claimant’s letters to the airline (i.e., defendant company) were given no heed and that no reply was sent to the aggrieved passenger (i.e., the claimant).

The compensation for long delays is also due to passengers of directly connecting flights reaching their final destination with a delay of at least three hours. The delay to be taken into account is the delay at arrival, including in case of flight connections. It does not matter whether the delay occurred at the departure airport, at the connecting airport(s) or at any stage of the journey, only the delay at the final destination of the journey is relevant for the right to compensation [*vide Air France SA v. Heinz-Gerke Folkerts* – case C-11/11].

As to the additional expenses of €57.32c incurred by the claimant as delineated above, the Tribunal asserts that on the 26<sup>th</sup> of July 2016, a District Judge sitting at

Uxbridge County Court London awarded a sum of €100.00c to the claimant in the case of **Christian Hazelwood v. British Airways** [case B01UB707]. This sum was payable to the claimant on the grounds that the defendant airline had failed in its obligation to provide care after a cancelled flight had led to the claimant being forced to sleep overnight in an airport terminal. On the basis of this, the Tribunal believes that claimant is also to be compensated the said sum of €57.32c, along with the €800.00c as compensation *as per* Regulation (EC) 261/2004.

### *Decision*

In the light of the above, the Tribunal is satisfied that the claim put forward by the claimant meets the requirements at Law and thus the Tribunal proceeds to accede to claimants request and condemns the defendant to pay the claimant the sum of eight hundred, fifty seven euros and thirty two euro cents (€857.32c) with statutory interest at the rate of 8% on the said amount from the 2<sup>nd</sup> of December, 2016.

All the expenses connected with these proceedings are to be borne by the defendant company.

Finally, the Tribunal orders that a copy of this judgment is served upon the parties in terms of Article 13 of Regulation (EC) no. 861/2007.

**Sgn. ADV. DR. KEVIN CAMILLERI XUEREB**  
*Adjudicator*

**Sgn. ADRIAN PACE**  
*Deputy Registrar*