

Aviation: The travellers right to reimbursement when the air ticket is part of a package tour

Both tour operators and air carriers are under heavy pressure due to travel restrictions during the corona crisis. This has resulted in many cancelled flights and package tours. As a rule, the traveller is entitled to reimbursement of the price of the entire package when the package tour is cancelled due to the COVID-19 pandemic, but can the claim for reimbursement of the price of the air ticket be raised against the air carrier?



Package Travel Act versus EU Regulation 261/2004 on air passenger rights

If the traveller has purchased two or more travel services from a tour operator, the traveller has purchased a package tour. In the event of cancellation, the traveller's rights are stated in the Package Travel Act, which is a partial implementation of an EU directive.

If the traveller has only purchased an air ticket, the traveller's rights in the event of cancellation are stated in EU Regulation 261/2004.

It is directly stated in EU Regulation 261/2004 that the Regulation does not apply if the package tour is cancelled for reasons other than cancellation of the flight. On the other hand, the Regulation does not affect travellers' rights under the Package Travel Act.

When the package tour consists of both a flight and another travel service, the traveller may in some cases also be covered by EU Regulation 261/2004. Therefore, in very special cases, the traveller can make claims against both the tour operator and the air carrier when the package tour is cancelled. This article only addresses the issue of reimbursement of the price of the air carrier ticket when the package tour is cancelled.

Right to reimbursement of the price of the flight ticket

According to the Package Travel Act, the traveller has the right to have the price of the package tour reimbursed if the tour operator cancels the package tour before the agreed departure time due to unavoidable and extraordinary circumstances, such as the COVID-19 pandemic. In such cases, the traveller has the right to have the price reimbursed within 14 days after the package tour was cancelled.

According to EU Regulation 261/2004, the air passenger has the right to choose reimbursement of the price of the air ticket if the flight was cancelled by the air carrier. In such cases, the air carrier is required to reimburse the price of the flight ticket within 7 days.

However, it follows directly from EU Regulation 261/2004 that the travellers right to reimbursement in the event of a flight cancellation applies if the flight is part of a package tour, unless the right to reimbursement follows from the Package Travel Directive. As the Package Travel Directive is partly implemented in the Package Travel Act, the Package Travel Act thus takes precedence over the Regulation on this point.

Decision of the European Court of Justice in Case C-163/18

The European Court of Justice has ruled on the issue of the right to reimbursement of the air ticket when the package tour is cancelled in case C-163/18.

In this case, three travellers had purchased a package tour from a tour operator who cancelled the package tour. Shortly afterwards, the tour operator went bankrupt. Subsequently, the three travellers raised claims for compensation for cancellation of the flight as well as reimbursement of the price of the air ticket against the air carrier in accordance with EU Regulation 261/2004.

The European Court of Justice therefore had to rule on whether travellers could claim reimbursement of the air ticket against the air carrier once the Package Travel Directive had been implemented in national law. And in that case, the European Court of Justice would have to rule on whether travellers could claim reimbursement of the air ticket from the air carrier if the tour operator could not pay or had taken guarantee measures to ensure reimbursement in accordance with the Package Travel Directive.

In its ruling, the European Court of Justice ruled that the traveller cannot claim reimbursement of the air ticket from the air carrier once the Package Travel Directive has been implemented in national law. This also applies in cases where the tour operator has gone bankrupt or has not taken guarantee measures to ensure reimbursement.

The European Court of Justice noted that if it had been possible for travellers to claim reimbursement of the air ticket from both the tour operator under the Package Travel Directive and the air carrier under EU Regulation 261/2004, this would lead to an unjustified overprotection of the travellers concerned to the detriment of the air carrier.

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