



CEES VAN DAM

## Airlines once again bite the dust before the European Court

On 19<sup>th</sup> November 2009, the European Court of Justice in Luxembourg once again dealt the airlines a serious blow. It held in its *Sturgeon* decision that airline passengers are not only entitled to compensation if their flight is cancelled but also if it is delayed for over three hours.

Since 2005, European passengers' rights are enshrined in a European Regulation. It provides passengers a right to compensation when they are denied boarding and when their flight is cancelled but not when their flight is delayed, however long the delay may be. This had strange consequences.

For example for Thomas and Victoria who each booked a flight from London to New York. Their flights were scheduled to depart at 7am.

When Thomas arrived at the airport, his flight appeared to be cancelled. The airline offered him an alternative flight and he arrived five hours late in New York.

When Victoria arrived at the airport, she learned that her flight was delayed. Finally, she departed the following morning at 7pm. She arrived 24 hours late in New York.

Although Victoria's trip was much more disturbed than Thomas's, he received € 600 and Victoria was left empty-handed. For the sole reason that Thomas' flight was cancelled and Victoria's flight was 'only' delayed.

This inconsistency ended when the European Court concluded that the Regulation leads to unequal treatment of passengers who are in a comparable situation. Both in case of cancellation and delay you arrive late at your destination but in the former case you get compensation and in the latter not. The Court held that this breaches the European principle of equal treatment. It therefore held that passengers are also entitled to compensation in case of delay. What the Court in fact did was adding a new rule to the Regulation.

Passengers can now claim compensation provided that the delay was longer than three hours and that the delay was not caused by 'extraordinary circumstances'. This means that passengers have no right to compensation if the delay is caused

by, for example, security risks, very poor weather conditions or unexpected flight safety shortcomings. However, a technical problem in an aircraft is not an extraordinary circumstance. If the delay is caused by a technical problem, the airline usually has to pay.

The *Sturgeon* decision is not the first one in which the airlines bite the dust before the European Court. In 2006, they argued that the Regulation breached the Montreal Convention but the Court disagreed. In 2008, they argued they did not need to pay compensation in case of a technical problem in an aircraft but again the Court ruled against them. And in July 2009 the Court decided that most passengers can file a claim against an airline in their country of residence rather than in that of the airline.

In this respect it is worth mentioning that the European Court in Luxembourg consists of 27 judges, one from each EU member state. This means 26 frequently flying ex-pats knowing what they talk about if it comes to passengers' rights.

The Court's decision further strengthens passengers' rights. However, this does not mean that problems for passengers are over because many airlines still violate the European Regulation. They do not provide passengers with information about their rights, they do not pay if they have to, and if passengers come up for their rights they are sent from pillar to post.

Because of their limited powers in this area, national authorities (in the UK the Civil Aviation Authority) are relatively toothless bodies that fail to sufficiently impress airlines.

After the European Court's decision it is now up to the European politicians to ensure that airlines really comply with the European rules. Most of them are also frequently flying ex-pats who know what they talk about if it comes to the way how many airlines deal with passengers' rights. Hopefully, the frequently flying politicians in Brussels and Strasbourg are as vigorous as the frequently flying judges in Luxembourg.

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