

Case name (date):
The “VTI” case (03/2020)

KEYWORDS:

Competence of the Legal clinic; Regulation (EC) n°261/2004; cancellation of plane tickets due to the Covid-19 pandemic

FACTS:

In this case, a user bought a plane ticket, flying between European countries. Both trips comprised two flights. The user received a SMS and an email from the company stating that she could cancel the flights with no extra fees due to the Covid-19 pandemic. The email mentioned that she could only receive vouchers worth the price of the initial ticket plus 50€. It seemed that the airline was offering vouchers exceeding the initial price of the ticket to encourage passengers to ask for vouchers instead of refunds.

The user was asking the Clinic if it is possible to ask for a refund instead of receiving the refund through vouchers.

LEGAL ANALYSIS:

Competence of the Clinic

The Clinic is competent only for cases in which the user can be considered a consumer and the other party can be defined as a trader, in accordance with article L.010-1 of the Luxembourgish Consumer Code.

Passengers might be considered as consumers for airlines, which is the trader. However, the question asked by the user whose flight was cancelled could only be solved through the application of the Regulation n°261/2004 on flight cancellation. While it could be argued that this regulation is Consumer law, it has not been added in the Luxembourgish Consumer Code. Since the Clinic’s competence is limited to issues for which the provisions of the Code are applicable, it was not competent to address the issue.

However, as a way to help consumers during the pandemic, the Clinic decided to accept requests from passengers, under the condition that they were not travelling for professional reasons.

Right to reimbursement in case of cancellation of the flight by the airline

In this case, the main problem was that the flights had not yet been cancelled by the airline. The passenger thus had an option. She could either wait for the airline to cancel the flights or cancel the flight herself immediately.

Passengers’ rights to reimbursement are covered by the EU Regulation n°261/2004, article 8, which mentions that a passenger can ask for a refund when their flight was cancelled by the airline.

However, according to article 8 of the same Regulation, there should be no additional compensation when the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. According to a communication of the European Commission of the 18th of March 2020, the Covid-19 outbreak should be considered as an “extraordinary circumstance”, preventing the passenger to get additional compensation.

Right to reimbursement in case of cancellation of the flight by the passenger

The EU Regulation n°261/2004 does not cover the case in which a passenger would cancel his own reservation himself. In this situation, the aftermath of the cancellation is decided by the airline, according to what is written in the General Terms and Conditions.

LEGAL SOLUTION:

The passenger had a choice to wait for the flight to be cancelled by the airline or cancel it herself. In the situation where she would wait for the cancellation from the airline, she would be entitled to demand a refund, without additional compensation. If she cancelled it by herself, she would only be entitled to receive vouchers.

However, she remained totally free of choosing to accept the vouchers or to wait for the flight to be cancelled.

SOLUTION SUGGESTED BY THE CLINIC:

The Clinic explained the two options described above to the passenger and told her that she had the possibility to wait for the flight to be officially cancelled. However, the Clinic also warned that if the flight was not cancelled by the airline eventually, she would not be able to ask for a refund.