

Case name (date):
The “MTY” case (04/04/2020)

KEYWORDS:

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

FACTS:

In that case, a user was seeking reimbursement after the cancellation of her flight ticket by the airline due to the Covid-19 outbreak. Instead of asking for reimbursement on the airline website, the passenger asked for compensation, as she did not know that refund and compensation were two different things.

The user asked the Clinic her legal options.

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

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.

LEGAL SOLUTION:

As the flights were cancelled by the airline itself, the passenger was entitled to ask for a refund. However, as the EU Commission stated, cancellations because of the Covid-19 outbreak should be considered as “extraordinary circumstances” preventing the passenger to ask for additional compensation.

SOLUTION SUGGESTED BY THE CLINIC:

The Clinic firstly explained to the passenger that she asked for compensation instead of asking for reimbursement and explain the difference between both concepts, as reimbursement covers the exact price paid by the passenger, and compensation is granted to cover the inconvenience and detrimental consequences of the cancellation.

The Clinic then told the passenger that she was entitled to a refund, since her flight was cancelled by the airline and she should file a reimbursement claim on the airline's website, paying extra-attention not to file a compensation claim, as she was not entitled to any.

The Clinic lastly mentioned that she could ask for further assistance to the "Centre Européen des Consommateurs du Luxembourg" (a European association that aims at helping consumers in case they are encountering difficulties in dealing with a trader, if the latter is situated in different member State of the EU) or the Luxembourgish Consumer Association (ULC), in case of resistance from airlines.