

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

KEYWORDS:

Competence of the Legal clinic; Regulation (EC) n°261/2004; cancellation of plane tickets due to the Covid-19 pandemic; unfair commercial practices (Directive 2005/29/EC)

FACTS:

In this case, a user bought a ticket for a EU single flight. The flight was cancelled as a result of both the closing of airports and the movement restrictions put into place due to the Covid-19 pandemic. The airline offered him a voucher that could be used to book another flight. Moreover, it seemed that the airlines did not mention in their emails that it was possible to ask for a refund.

The user is asking if he can receive a refund instead of a voucher.

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 reimbursements are protected by Regulation No. 261/2004, in particular article 8 mentions that a passenger can ask for a refund when their flight was cancelled by the airline.

Paragraph 1 of article 8 specifies that in the event of cancellation of a flight by the airline, a passenger has a choice between a full refund of the ticket price or a rerouting to the final destination of the flight.

It could be possible to ask for reimbursement but hardly for compensation, due to the extraordinary circumstances (according to the communication of the European Commission of the 18th of March 2020).

In accordance with article 7 paragraph 3 of Regulation 261/2004, the user could be entitled to reimbursement.

As a result, the airline cannot force passengers to accept a voucher instead of a refund unless the passenger agreed in writing.

Unfair commercial practices

In the communications between the user and the airlines, the information offered by the airline could be considered misleading. Article 14 of Regulation 261/2004 states that airlines have the duty to inform passengers about the choices available after the cancellation of their ticket, including the possibility of a refund. Article L 122-3 of the Luxembourgish Consumer Code (LCC) prohibits unfair commercial practices in the form of misleading omissions.

The airline in their emails did not inform the consumer that he always had the right to ask for a refund instead of vouchers, even though it is a legal obligation to do so. Failing to disclose the information about the choice passengers' have when their flight is cancelled by the airline may be considered as a misleading omission.

LEGAL SOLUTION:

The passenger has a right to ask for a refund. Such a request shall not be turned down by the airline, under the provisions of the Regulation n°261/2004. Failing to offer a choice and disclosing the possibility of a refund for the passenger may also be considered as an unfair commercial practice and may result in the contract's nullity and a fine ranging between 251 and 120.000 EUR.

SOLUTION SUGGESTED BY THE CLINIC:

The Clinic suggested the user to ask for refund through the company's website while mentioning that he was entitled to a refund, nonetheless. If the company refuses his claim, the Clinic suggested the passenger to write a registered letter to the airline mentioning that the not informing the passenger of his right to demand a refund could be an unfair commercial practice.

In such a case, the Clinic also suggested to get in touch with the Union Luxembourgeoise des Consommateurs, as they would be able to assist him in writing the registered letter.

SPECIFIC REMARKS:

Cases regarding flights' cancellation were only accepted because of the pandemic, as this kind of issues does not normally fall into the Clinic's scope of competence.