

No double compensation in the event of denied boarding – compensation may be offset against damages

Ruling (Tenor)

1. Upon the plaintiff's appeal, the judgment of the Local Court (Amtsgericht) Erding dated 12 January 2024, case no. 117 C 3159/22, is partially amended and reworded as follows: The defendant is ordered to pay the plaintiff an amount of €1,920.00 plus interest on this amount at a rate of 5 percentage points above the respective base interest rate since 1 October 2022, as well as pre-litigation legal fees in the amount of €280.60. The remainder of the claim is dismissed.
2. The appeal is otherwise dismissed.
3. The plaintiff shall bear 17% and the defendant 83% of the costs of the legal dispute.
4. The judgment is provisionally enforceable.

Order

The amount in dispute for the appeal proceedings is set at €2,317.88.

Reasons for the Decision

1.

To avoid repetition, reference is made to the chamber's previous remarks dated 17 June 2024, 10 October 2024, and 4 November 2024.

2.

The plaintiff is entitled, due to the unjustified denial of boarding, to a claim—both in her own right and by assignment—for the ticket costs in the amount of €720.00, as well as to compensation under Article 7 in conjunction with Article 4(3) of Regulation (EC) No. 261/2004 in the amount of €1,200.00.

The additional claims asserted in the lawsuit—namely the frustrated expenses for hotel and transport at the destination and for the initial journey to the airport—fall under the scope of set-off under Article 12 of Regulation (EC) No. 261/2004. In this context, it is irrelevant whether the compensation has already been paid, provided that the claim is brought against the party liable for both the compensation and the further (specific) damage, and both claims are the subject of the same legal dispute.

3.

Claims under Regulation (EC) No. 261/2004 and claims for damages under national law exist cumulatively. The passenger may choose which claims to assert and should be able to recover the full amount of their loss. They may also assert both types of claims. However, under Article 12(1) of Regulation (EC) No. 261/2004, this must not result in the cumulation of compensation irrespective of the actual damage incurred.

If the lump-sum compensation under Regulation (EC) No. 261/2004 also covers the same loss

as the specific national compensation claim, the passenger may assert the broader claim; however, compensation may not be awarded twice, as Article 12 of the Regulation prohibits unjust enrichment or overcompensation (cf. Bollweg in Staudinger/Keiler, Commentary on the Air Passenger Rights Regulation, 1st ed. 2016, Art. 12, para. 12).

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In the present case, the asserted claims are based on the denial of boarding and are intended to compensate for its consequences. The compensation under Articles 4 and 7 of Regulation (EC) No. 261/2004 is meant to provide a lump-sum remedy for precisely those consequences of the denied boarding that the plaintiff describes in detail as specific heads of damage. The chamber therefore considers it appropriate to offset the compensation amount of €1,200 against the specifically asserted damage items, to the extent this has been requested by the defendant, which is also in line with the principle of benefit set-off under German tort law. The fact that the defendant has not yet actually paid the compensation under Article 7 of Regulation (EC) No. 261/2004 to the plaintiff does not preclude this, as it would otherwise result in an overcompensation of the plaintiff (cf. BeckOGK/Steinrötter/Bohlson, 1 August 2024, Air Passenger Rights Regulation, Art. 12, paras. 5 and 6).

This conclusion is also unaffected by the fact that a passenger faces litigation cost risks when asserting both the lump-sum compensation and specific damages subject to set-off, since they would be compensated twice if they were permitted to claim both the lump-sum compensation and the specific damages (cf. Führich/Staudinger, Travel Law, 9th edition, § 42 para. 107 with further references). This is precisely the situation that Article 12 of Regulation (EC) No. 261/2004 seeks to prevent. The passenger should be able to claim full compensation for their loss—but no more than that (cf. BeckOGK/Steinrötter/Bohlson, 1 August 2024, Air Passenger Rights Regulation, Art. 12, paras. 5 and 6).

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Contrary to the assertion made by the plaintiff in the submission dated 22 July 2024, there is no doubt that the claims for damages asserted here are not based on Articles 8 or 9 of Regulation (EC) No. 261/2004. In the first instance, the damage positions subject to set-off were presented solely as frustrated expenses incurred before the denial of boarding took place. Claims under Article 9(1)(a) or (c) of Regulation (EC) No. 261/2004 were not asserted. For instance, the plaintiff claimed the frustrated costs of the first journey to the airport, not the costs of a second journey incurred due to the denial of boarding. Only the latter would fall under Article 9(1)(c) of the Regulation. Similarly, hotel expenses at the destination do not fall under the care provisions, nor do the twice-incurred airport transfer costs at the destination airport.

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The claim for reimbursement of pre-litigation attorney's fees arises on the basis of a value in dispute of €1,920. In this context, it is irrelevant whether the defendant was in default, as the breach of duty in the form of the unjustified denial of boarding already gives rise to the claim for damages.

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2. The legal questions at issue have already been definitively decided by the highest courts; neither the admission of an appeal nor a referral to the Court of Justice of the European Union (CJEU) is necessary.

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In case X ZR 169/18, the German Federal Court of Justice (BGH) held on 31 March 2020 that set-off is not excluded merely because the wording of Article 12(1) sentence 2 of Regulation (EC) No.

261/2004 only provides for set-off of the compensation under the Regulation against claims arising from other legal provisions—and not in the reverse direction. According to this, both the compensation can be offset against a damages claim, and the damages claim can be offset against the compensation.

According to the rationale behind Article 12(1) sentence 2, this provision is intended to prevent passengers from claiming compensation under Article 7 of the Regulation and, in addition, further compensation for additional damage. To achieve this goal, set-off must be permitted regardless of which of the two claims is fulfilled first. Otherwise, the scope of entitlement would depend on the order of assertion, which would be inappropriate (cf. BGH, op. cit., para. 8).

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The decisive argument is that no overcompensation may occur. In the case decided by the Federal Court of Justice, the compensation had not yet been paid either, and yet it was offset. Accordingly, it does not matter whether the compensation has already been paid, as long as overcompensation is avoided through the offset. The injured party must not receive both a lump-sum and a specific compensation for the same damage.

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Similarly, in case C-354/18 before the CJEU, in the judgment of 29 July 2019, the compensation had not yet actually been paid (only offered), and the CJEU still considered set-off to be permissible (without further elaboration). In that case, the plaintiffs claimed €1,500 in non-material damages and €437 and €386, respectively, in lost earnings. The defendant argued that no claim for non-material damages exceeding the compensation under Article 7 could be made. The national court ordered the defendant to pay €400, corresponding to the compensation. The chamber thus interprets the CJEU judgment as implying that the compensation had not been paid yet either; otherwise, the national court would not have ordered the defendant to pay that amount.

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The fact that the CJEU did not even address whether the compensation had been paid, but only referred to the existence of such a claim, indicates that in the present case, too, set-off is possible—even if the compensation has not yet been actually paid.

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Therefore, a referral to the CJEU is also unnecessary in this case, as the relevant question has already been sufficiently clarified by the CJEU's judgment of 29 July 2019, case C-354/19.

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The admission of an appeal is also not necessary, as the Federal Court of Justice already established in its judgments of 31 March 2020 (case X ZR 169/18) and 30 September 2014 (case X ZR 126/13) that both the compensation can be offset against the additional damages and vice versa.

The decisive factor is the avoidance of overcompensation, in accordance with the principles of benefit set-off. Based on these criteria, it is therefore permissible to offset the compensation against the specific damage claims to the extent that the judgment does not award both the full compensation and the specific damages.

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3. The decision on costs follows from § 92 of the Code of Civil Procedure (ZPO). The decision on provisional enforceability was made pursuant to § 708 no. 10 ZPO.

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The amount in dispute was determined in accordance with § 47 of the Court Fees Act (GKG).