

**FEDERAL COURT OF JUSTICE
IN THE NAME OF THE PEOPLE
JUDGMENT
X ZR 136/23**

Announced on:
September 24, 2024
Anderer,
Judicial Officer
as Clerk of the Court Registry

In the legal dispute

Reference works: yes
BGHZ: no
BGHR: yes
JNEU: yes

Regulation on Air Passenger Rights, Art. 5(3)

a) If an extraordinary circumstance results in not all scheduled flights being able to take place, the airline must be granted a margin of discretion when assessing appropriate measures (confirmation of BGH, judgment of August 21, 2012 – X ZR 138/11, BGHZ 194, 258 = NJW 2013, 374 = RRa 2012, 288 para. 33).

b) Therefore, a causal link between an extraordinary circumstance and the cancellation of a flight can also be affirmed when the airline decides not to operate certain flights on the day of the extraordinary circumstance in order to avoid a cancellation or significant delay on the following day (supplement to BGH, judgment of June 12, 2014 – X ZR 121/13, NJW 2014, 3303 = RRa 2014, 293 para. 32).

**BGH, Judgment of September 24, 2024 – X ZR 136/23 – Regional Court (LG) Stuttgart
Local Court (AG) Nürtingen**

The Tenth Civil Senate of the Federal Court of Justice has ruled on the oral hearing of September 24, 2024, through the presiding judge Dr. Bacher, judge Dr. Deichfuß, and judges Dr. Kober-Dehm, Dr. Marx, and Dr. von Pückler:

It is adjudged:

The appeal against the judgment of the 5th Civil Chamber of the Regional Court of Stuttgart dated September 28, 2023, is dismissed at the plaintiff's expense.

By law

Statement of Facts:

The plaintiff is claiming compensation from the defendant based on assigned rights under the EU Regulation on Air Passenger Rights.

The assignor held a confirmed booking for a flight operated by the defendant, scheduled to depart Stuttgart at 18:15 (local time) and arrive in Hamburg at 19:30 on February 27, 2020.

The defendant canceled the flight at 20:26. The assignor reached Hamburg on February 28, 2020, with a delay of 12 hours and 44 minutes.

The Local Court had ordered the defendant to pay €250 plus interest. The Court of Appeal dismissed the claim via default judgment and upheld that judgment after an objection was filed. With the appeal admitted by the Court of Appeal, the plaintiff continued to pursue the claim. The defendant opposes the appeal.

Reasons for the Decision:

The admissible appeal is unfounded.

I. The Court of Appeal essentially reasoned as follows:

The plaintiff has no claim to compensation based on assigned rights.

The defendant can invoke the existence of extraordinary circumstances under Article 5(3) of the Air Passenger Rights Regulation.

A snowstorm in Stuttgart affected the entire flight day. As a result, there were delays in slot assignments for earlier flights. These incidents remained causally connected to the decision to cancel the assignor's booked flight.

According to BGH case law on rescheduling due to strikes, an airline – which must work to minimize disruptions for all passengers and restore normal operations as quickly as possible – has discretion in assessing reasonable (cancellation) measures. The defendant rightly made a discretionary decision affecting the assignor's flight and its return leg in order to preserve further scheduled flights the next day starting from Stuttgart.

The defendant sufficiently demonstrated that neither it nor other airlines had an earlier alternative transport option to Hamburg.

II. This assessment withstands legal scrutiny in all decisive respects.

1. The Court of Appeal rightly held that the cancellation in question was due to extraordinary circumstances within the meaning of Art. 5(3) of the Air Passenger Rights Regulation.
 - a) It correctly assumed that extreme weather conditions causing delayed take-off clearances by air traffic control can constitute extraordinary circumstances.
 - b) Also correctly, it found that disruptions affecting earlier flights of the aircraft in question on the same day may be considered extraordinary circumstances for later flights.

The European Court of Justice (ECJ) ruled that an airline may rely on an extraordinary circumstance affecting a previous flight it operated with the same aircraft, provided there is a direct causal link between that circumstance and the delay or cancellation of a later flight. National courts must assess whether this link exists, taking into account the aircraft's operating schedule.

The BGH has clarified that such a link generally no longer exists if there was enough time to recover from the disruption by reasonable means – for example, with scheduling buffers, which often exist overnight. However, if night flight bans prevent recovery, the assessment may differ.

c) Based on this, the Court of Appeal found that a direct link may also exist even if the extraordinary circumstance does not directly prevent the disputed flight, but would impair subsequent flights.

The BGH has repeatedly ruled that a single flight cancellation due to extraordinary circumstances is not automatically avoidable simply because another flight could have been canceled instead.

If an extraordinary circumstance prevents all scheduled flights from operating, the airline is entitled to discretion in deciding on appropriate measures (BGH judgment of August 21, 2012). A causal link to a flight cancellation planned for the following day may also exist if the airline decided to operate all flights (albeit delayed) on the day of the disruption (BGH judgment of June 12, 2014). The same applies if it decides not to operate certain flights on the disruption day to avoid cancellations or major delays the next day.

According to ECJ case law, airlines generally may not reassign a passenger's seat to transport others and then evade compensation obligations by citing extraordinary circumstances (ECJ, Oct 4, 2012 – C-22/11 – Finnair/Lassooy).

However, if an extraordinary circumstance affects multiple flights with the same aircraft, the aircraft's operating schedule must be considered. It must be possible for the airline to invoke extraordinary circumstances from earlier flights with the same aircraft (ECJ, June 11, 2020 – C-74/19 – TAP).

The airline is not required to carry out all scheduled flights regardless of consequences. Rather, it may seek to minimize disruptions to the aircraft's schedule.

Thus, a causal link can still be affirmed if certain flights are canceled on the disruption day to avoid cancellations or major delays the next day.

d) Against this background, the Court of Appeal's decision in this case is legally unobjectionable.

The Court found that the defendant canceled both the assignor's flight and the return flight affected by the night flight ban in order to secure the following day's scheduled operations from Stuttgart, due to weather-related delays and slot rescheduling. This supports the necessary causal link between the extraordinary circumstances and the cancellation.

Whether the aircraft would have been operational the next day without the scheduled “daily check” in Stuttgart is not relevant to the decision.

2. The Court of Appeal rightly – and unchallenged – found that there was no alternative transport that would have gotten the assignor to Hamburg earlier.

III. There is no reason to submit a preliminary ruling request to the ECJ under Article 267 TFEU.

The ECJ has already clarified the relevant interpretative principles for Article 5(3) of the Regulation. Applying these to individual cases is the role of national courts.

IV. The decision on costs is based on § 97(1) of the German Code of Civil Procedure (ZPO).

Judges:

Bacher, Deichfuß, Kober-Dehm, Marx, von Pückler

Previous instances:

Local Court Nürtingen, Decision of April 11, 2022 – 40 C 163/22

Regional Court Stuttgart, Decision of September 28, 2023 – 5 S 79/22