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Judgments of the Court in Cases C-474/22 | Laudamotion (Decision not to take a delayed flight) and C-54/23 | Laudamotion and Ryanair

Passengers who did not present themselves for boarding for a flight which arrived with a long delay or who purchased a ticket for an alternative flight and arrived at the destination with a delay of less than three hours are not entitled to fixed compensation

In such circumstances, damage consisting in a loss of time cannot be established

A delay of more than three hours was announced in respect of two flights from Düsseldorf to Palma de Mallorca operated by the airline Laudamotion. Worried that the delay of the flight on which they had a reservation would cause them to miss a business appointment, two passengers decided not to take their flights. The first passenger's flight arrived with a delay of 3 hours and 32 minutes. As for the second passenger, he independently booked an alternative flight and arrived at the destination with a delay of less than three hours in relation to the original flight's scheduled arrival time.

The first passenger assigned his rights to the legal assistance company flightright. Flightright and the second passenger have brought actions against Laudamotion before the German courts with a view to obtaining the fixed compensation of €250 which any passenger may in principle claim, under the Air Passenger Rights Regulation ¹, in the event of a flight delay of three hours or more after the originally scheduled arrival time.

The German Federal Court of Justice asks the Court of Justice **whether, in a situation where it is announced that a flight will likely be delayed by at least three hours beyond the originally scheduled arrival time, an air passenger is entitled to that compensation where he or she did not present himself or herself for check-in or where that passenger independently booked an alternative flight which allowed him or her to reach the final destination with a delay of less than three hours.**

According to the Court of Justice, **neither of those situations grants a right to the fixed compensation.** It recalls its case-law ² according to which passengers whose flights are delayed are, for the purposes of the application of the right to compensation, **treated as passengers whose flights are cancelled** where the delay is equal to or in excess of three hours. The crucial factor which has led the Court to adopt that approach is that passengers whose flight is affected by a long delay, like passengers whose flight is cancelled, suffer **damage in the form of an irreversible loss of time equal to or in excess of three hours.**

However, **a passenger who did not go to the airport has not, in all likelihood, suffered such a loss of time.** Moreover, where a flight is affected by a long delay, the intention is that it will still be performed and, accordingly, check-in must be carried out. It follows that passengers whose flight is affected by a long delay are not exempted from the obligation to present themselves for check-in, unlike passengers whose flight is cancelled and for whom such an exemption is expressly laid down in the Air Passenger Rights Regulation. Lastly, that regulation is intended

to provide compensation for damage that is almost identical for every passenger. However, damage caused due to missing a business appointment is individual in nature, and could therefore be redressed only by way of 'further compensation'³.

In addition, **an air passenger** who chose not to take a flight for which he or she had a confirmed reservation and **who, owing to an alternative flight on which that person booked a seat independently, arrived at the final destination with a delay of less than three hours after the originally scheduled arrival time, also has not suffered a loss of time conferring entitlement to fixed compensation.** The Court notes that the Air Passenger Rights Regulation is intended to remedy 'serious trouble and inconvenience' suffered by passengers in the context of a flight. However, such inconvenience, which may result from the fact that a passenger had to find an alternative flight himself or herself, cannot be regarded as 'serious', within the meaning of the Air Passenger Rights Regulation, where that passenger reached his or her final destination with a delay of less than three hours.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text and, as the case may be, the abstract of the judgments ([C-474/22](#) and [C-54/23](#)) is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ [Regulation \(EC\) No 261/2004](#) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of a flight. The amount of €250 applies with respect to flights of 1500 kilometres or less.

² Judgments of 19 November 2009, *Sturgeon and Others*, [C-402/07](#) and [C-432/07](#) (see also Press Release [No 102/09](#)), and of 7 July 2022, *SATA International – Azores Airlines (Failure of the refuelling system)*, [C-308/21](#).

³ Such damage may, where appropriate, be compensated on the basis of national or international law.