Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

7 April 2022 *

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights – Connecting flight consisting of two legs – Significant delay to final destination caused in the second leg of that flight linking two airports in a third country – Validity of that regulation under international law)

In Case C-561/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nederlandstalige ondernemingsrechtbank Brussel (Brussels Companies Court (Dutch-speaking), Belgium), made by decision of 21 October 2020, received at the Court on 26 October 2020, in the proceedings

Q,

R,

S

v

United Airlines Inc.,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin (Rapporteur), J.-C. Bonichot, L.S. Rossi and O. Spineanu-Matei, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Q, R and S, by B. Schaumont and J. De Man, advocaten,

– United Airlines Inc., by M. Wouters, advocaat,

* Language of the case: Dutch.

– the Belgian Government, by S. Baeyens, P. Cottin and C. Pochet, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Parliament, by L. Stefani and I. Terwinghe, acting as Agents,

– the Council of the European Union, by N. Rouam and K. Michoel, acting as Agents,

– the European Commission, by A. Nijenhuis, K. Simonsson and P.-J. Loewenthal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 December 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns, in the first place, the interpretation of Article 3(1)(a), read in conjunction with Articles 6 and 7 of 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 flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1), and, in the second place, the validity of Regulation No 261/2004 in the light of international law and, in particular, in the light of the principle of the complete and exclusive sovereignty of a State over its territory and airspace.

2 The request has been made in proceedings between Q, R and S, on the one hand, and United Airlines Inc. on the other, concerning the payment of compensation for a delayed connecting flight.

Legal context

3 Recitals 1, 4, 7 and 8 of Regulation No 261/2004 read as follows:

‘(1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.

…

(4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

…

(7) In order to ensure the effective application of this Regulation, the obligations that it creates should rest with the operating air carrier who performs or intends to perform a flight, whether with owned aircraft, under dry or wet lease, or on any other basis.

(8) This Regulation should not restrict the rights of the operating air carrier to seek compensation from any person, including third parties, in accordance with the law applicable.'

4 Article 2 of that regulation, entitled 'Definitions', provides, in points (a) to (c) and (h) thereof:

'For the purposes of this Regulation:

(a) "air carrier" means an air transport undertaking with a valid operating licence;

(b) "operating air carrier" means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;

(c) "Community carrier" means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers [(OJ 1992 L 240, p. 1)];

…

(h) "final destination" means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected'.

5 Article 3 of the said regulation, entitled 'Scope', provides, in paragraphs 1 and 5 thereof:

'1. This Regulation shall apply:

(a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;

(b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.

…

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.'

6 Article 5 of the same regulation, entitled 'Cancellation', provides, in paragraphs 1 and 3 thereof:

'1. In case of cancellation of a flight, the passengers concerned shall:

…

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:
   (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or
   (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
   (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

…

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.'

7 Under Article 6 of Regulation No 261/2004, entitled 'Delay':

'1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

(a) for two hours or more in the case of flights of 1 500 kilometres or less; or

(b) for three hours or more in the case of all intra-Community flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres; or

(c) for four hours or more in the case of all flights not falling under (a) or (b),

passengers shall be offered by the operating air carrier:

(i) the assistance specified in Article 9(1)(a) and 9(2); and

(ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.'

8 Under the heading 'Right to compensation', Article 7 of that regulation provides, in paragraph 1 thereof:

'Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1 500 kilometres or less;

(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;

(c) EUR 600 for all flights not falling under (a) or (b).

…'

9 Article 13 of the said regulation, entitled 'Right of redress', states:

'In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 The applicants in the main proceedings made a single reservation, via a travel agency, with the Community carrier Deutsche Lufthansa AG ('Lufthansa'), for a connecting flight from Brussels (Belgium) to San José (United States), with a stopover in Newark (United States).

11 The entire connecting flight was operated by United Airlines, an air carrier established in a third country. The applicants in the main proceedings arrived at their final destination with a delay of 223 minutes.

12 By a letter of 6 September 2018, the company Happy Flights BVBA, to which the claim lodged by the applicants in the main proceedings had been assigned, gave United Airlines formal notice that it was liable to pay compensation in the amount of EUR 600 per person for that delay, namely a total amount of EUR 1 800, pursuant to Regulation No 261/2004.

13 On 4 October 2018, United Airlines replied to Happy Flights, claiming that that regulation was not applicable, on the ground that that delay had occurred during the second leg of the flight concerned.

14 By a letter of 5 October 2018, Happy Flights replied to United Airlines, referring to the case-law of the Court to refute its position and urged it to pay the compensation referred to in paragraph 12 above.

15 By a letter of 10 October 2018, United Airlines in turn replied to Happy Flights.

16 On 11 October 2018, Happy Flights sent a letter of formal notice to United Airlines. On the same day, the latter informed Happy Flights that it was maintaining its position.

17 On 3 May 2019, Happy Flights, again putting United Airlines on notice to make payment, informed it once more that the claim that had been assigned to it had been transferred to the applicants in the main proceedings.

18 On 22 July 2019, the latter summoned United Airlines to appear before the Nederlandstalige ondernemingsrechtbank Brussel (Brussels Companies Court (Dutch-speaking), Belgium), the referring court, seeking an order requiring it to pay the compensation referred to in paragraph 12 above, together with default interest as from 6 September 2018 and statutory interest.

19 In that context, that court has doubts as to the answer to be given to certain arguments raised by United Airlines, which concern both the applicability of Regulation No 261/2004 and its validity.

20 In the first place, United Airlines disputes the applicability of Regulation No 261/2004 where a long delay occurs during a flight to and from airports located in the territory of a third country, even if it is the second and last leg of a connecting flight the first leg of which is operated from an airport situated in the territory of a Member State.

21 In that regard, first, the referring court indicates that, although the judgment of 31 May 2018, *Wegener* (C-537/17, EU:C:2018:361), which concerned a delay occurring in the first leg of a connecting flight operated by a non-Community air carrier departing from an airport located in the territory of a Member State, militates in favour of the applicability of Regulation No 261/2004, the lessons from that judgment cannot simply be transposed to the case before it, since, in the present case, it is the second leg of the flight concerned, departing from an airport located in the territory of a third country, which is the cause of the delay suffered by the applicants in the main proceedings.

22 Second, the referring court observes that, in the judgment of 11 July 2019, *České aerolinie* (C-502/18, EU:C:2019:604), the Court held that Regulation No 261/2004 applied also to the second leg of a connecting flight when the first leg of that flight had been operated from an airport located in the territory of a Member State. The case giving rise to that judgment raised the question whether the Community carrier that had operated the first leg of that flight could be required to compensate a passenger who had suffered a significant delay caused in the second leg of the same flight, physically operated by a third-country air carrier. However, according to that court, the facts of that case differ from those of the dispute before it in so far as that dispute does not concern any Community carrier, the Community carrier which issued the tickets, Lufthansa, not even being a party to that dispute. Therefore, the solution adopted by the Court in that judgment cannot simply be transposed to the said dispute.

23 In the second place, as regards the question of the validity of Regulation No 261/2004, the referring court observes that United Airlines argues that, if that regulation were to apply in the event of a long delay in the second leg of a connecting flight, carried out entirely within the territory of a third country, it would have an extraterritorial effect contrary to international law. More particularly, according to United Airlines, the principle of sovereignty precludes that regulation from applying to a situation occurring in the territory of a third country, such as that at issue in the main proceedings, in which the delay occurred in the territory of the United States and its effects were produced exclusively within that territory. If that argument of United Airlines is correct, the referring court then questions the validity of the same regulation in the light of international law.

24 In those circumstances, the Nederlandstalige ondernemingsrechtbank Brussel (Brussels Companies Court (Dutch-speaking)) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Should Article 3(1)(a) and Article 7 of Regulation [No 261/2004], as interpreted by the Court of Justice, be interpreted as meaning that passengers are entitled to financial compensation from a non-Community air carrier when they arrive at their final destination with a delay of more than three hours as a result of a delay of the last flight, the place of departure and the place of arrival of which are both situated in the territory of a third country, without a stopover in the territory of a Member State, in a series of connecting flights commencing at an airport situated in the territory of a Member State, all of which have been physically operated by that non-Community air carrier and all of which have been reserved in a single booking by the passengers with a Community air carrier which has not physically operated any of those flights?

(2) If the first question is answered in the affirmative, does Regulation [No 261/2004], as interpreted in the first question, infringe international law and, in particular, the principle of the exclusive and complete sovereignty of a State over its territory and airspace, in making EU law applicable to a situation taking place within the territory of a third country?’

Consideration of the questions referred

The first question

25 By its first question, the referring court asks, in essence, whether Article 3(1)(a), read in conjunction with Articles 6 and 7 of Regulation No 261/2004, must be interpreted as meaning that a passenger on a connecting flight, comprising two legs and subject to a single booking with a Community carrier, departing from an airport located in the territory of a Member State and arriving at an airport located in a third country via another airport in that third country, is entitled to compensation from the third-country air carrier which operated the entirety of that flight, where that passenger has reached his or her final destination with a delay of more than three hours caused in the second leg of the said flight.

26 In order to answer that question, it must be recalled that, under Article 3(1)(a) of Regulation No 261/2004, that regulation applies to passengers departing from an airport located in the territory of a Member State.

27 It thus follows from the clear wording of that provision that the situation of passengers on a connecting flight who have departed from an airport located in the territory of a Member State falls within the scope of Regulation No 261/2004.

28 That conclusion is not called into question either by the fact that that flight made a stopover in the territory of a third country or by the fact that the air carrier which operated that flight is not a ‘Community carrier’ within the meaning of Article 2(c) of that regulation.

29 The Court has consistently held that a flight with one or more connections which was the subject of a single reservation constitutes a whole for the purposes of the right of passengers to compensation under Regulation No 261/2004, implying that the applicability of that regulation is

to be assessed with regard to the place of the flight's initial departure and the place of the final destination of that flight (judgment of 24 February 2022, *Airhelp (Delay of re-routing flight)*, C-451/20, EU:C:2022:123, paragraph 26 and the case-law cited).

30 It follows that, since connecting flights that have been subject to a single booking must be regarded as constituting a whole for the purposes of passengers' right to compensation provided for by Regulation No 261/2004 and since the applicability of that regulation to the passengers of those flights must be assessed in the light of the initial place of departure and the final destination of those flights, the place where a delay occurs, as the Advocate General stated in point 40 of his Opinion, has no bearing on that applicability.

31 Moreover, as is apparent from Article 3(1)(b) of Regulation No 261/2004, the operation of a flight by a Community carrier is a condition for the application of that regulation only as far as concerns passengers taking flights from an airport located in the territory of a third country to an airport located in the territory of a Member State. Conversely, in accordance with Article 3(1)(a) of the said regulation, that condition is not required as regards passengers taking flights from an airport located in the territory of a Member State.

32 Last, the objective of consumer protection pursued by Regulation No 261/2004 confirms the conclusion set out in paragraph 27 above. As the Advocate General emphasised in point 41 of his Opinion, making a distinction according to whether a delay is caused in the first or the second leg of a connecting flight that has been the subject of a single reservation would amount to an unjustified distinction, such that United Airlines would be obliged to pay compensation in the event of delay occurring during the first leg of that flight, but would not be obliged to do so in the event of delay occurring during the second leg of the said flight, even though such a connecting flight must be regarded as a whole for the purposes of entitlement to compensation and passengers suffer, in both cases, the same delay at the final destination as well as, therefore, the same inconvenience.

33 In the light of the foregoing, a connecting flight from the European Union, such as that at issue in the main proceedings, must be considered to fall within the scope of Regulation No 261/2004, by virtue of Article 3(1)(a) thereof.

34 With regard to the question whether a third-country air carrier which does not have a contract of carriage with passengers on a connecting flight but which operated that flight, may be liable to pay the passengers compensation by virtue of Regulation No 261/2004, it is apparent from the wording of Article 5(1)(c) and (3) of that regulation that the party liable to pay that compensation can only be the 'operating air carrier' within the meaning of Article 2(b) of the said regulation. According to the latter provision, an 'operating air carrier' is 'an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger'.

35 The Court has stated that that definition sets out two cumulative conditions which must be satisfied if an air carrier is to be regarded as an 'operating air carrier', relating, first, to the performance of the flight in question and, second, to the existence of a contract with a passenger (judgment of 11 July 2019, *České aerolinie*, C-502/18, EU:C:2019:604, paragraph 23 and the case-law cited).

36 As the Advocate General indicated, in essence, in point 47 of his Opinion, the EU legislature, when adopting Regulation No 261/2004, opted for exclusive liability of the operating air carrier in order to guarantee the protection of the rights of air passengers, and legal certainty as to the designation of the person bound by the obligations imposed by that regulation.

37 As regards the first condition, it highlights the concept of a 'flight', which is its predominant element. The Court has previously held that that concept must be understood as 'an air transport operation, being as it were a "unit" of such transport, performed by an air carrier which fixes its itinerary' (judgment of 4 July 2018, *Wirth and Others*, C-532/17, EU:C:2018:527, paragraph 19).

38 Therefore, an air carrier which, in the course of its air passenger carriage activities, decides to perform a particular flight, including fixing its itinerary, and, by so doing, offers to conclude a contract of air carriage with members of the public must be regarded as the operating air carrier. The adoption of such a decision means that that air carrier bears the responsibility for performing the flight in question, including, inter alia, any cancellation or significantly delayed time of arrival (judgment of 4 July 2018, *Wirth and Others*, C-532/17, EU:C:2018:527, paragraph 20).

39 As far as the second condition is concerned, it must be recalled that, according to the second sentence of Article 3(5) of Regulation No 261/2004, where an operating air carrier which has no contract with the passenger performs obligations under that regulation, it is to be regarded as doing so on behalf of the person having a contract with that passenger.

40 It follows that, as the Advocate General observed in point 49 of his Opinion, the absence of a contractual link between the passengers concerned and the operating air carrier is irrelevant, provided that that carrier has established its own contractual relationship with the air carrier that has a contract with those passengers.

41 It is apparent from the file submitted to the Court, first, that United Airlines operated the connecting flight at issue in the main proceedings and, second, that that flight was operated under a code-sharing agreement with Lufthansa.

42 In those circumstances, United Airlines must be regarded as being the operating air carrier, within the meaning of Article 2(b) of Regulation No 261/2004, since it operated that flight acting, under a code-sharing agreement, on behalf of Lufthansa, the contracting carrier in the main proceedings.

43 Last, it should be noted that it is apparent from Article 13 of Regulation No 261/2004 that an operating air carrier which pays compensation or discharges other obligations incumbent on it under that regulation retains the right to seek compensation from any person, including third parties, in accordance with the applicable national law.

44 In the light of all the foregoing considerations, the answer to the first question is that Article 3(1)(a), read in conjunction with Articles 6 and 7 of Regulation No 261/2004, must be interpreted as meaning that a passenger on a connecting flight, comprising two legs and subject to a single booking with a Community carrier, departing from an airport located in the territory of a Member State and arriving at an airport located in a third country via another airport in that third country, is entitled to compensation from the third-country air carrier which operated the entirety of that flight acting on behalf of that Community carrier, where that passenger has reached his or her final destination with a delay of more than three hours caused in the second leg of the said flight.

The second question

45 By its second question, the referring court asks whether Regulation No 261/2004 is valid in the light of the principle of customary international law according to which each State has complete and exclusive sovereignty over its airspace, in that that regulation applies to passengers on a connecting flight departing from an airport located in the territory of a Member State to an airport located in the territory of a third country, the significant delay of which is caused in a leg of that flight operated in the territory of that third country.

46 First of all, it must be recalled that, as is apparent from Article 3(5) TEU, the European Union is to contribute to the strict observance and development of international law. Consequently, when it adopts an act, it is bound to observe international law in its entirety, including customary international law, which is binding upon the institutions of the European Union (judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraph 101 and the case-law cited).

47 Next, it should be noted that the principle that each State has complete and exclusive sovereignty over its airspace is a principle of customary international law (see, to that effect, judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraphs 103 and 104).

48 Lastly, it is common ground that principles of customary international law, such as that mentioned in the previous paragraph, may be relied upon by an individual for the purpose of the Court's examination of the validity of an act of the European Union in so far as, first, those principles are capable of calling into question the competence of the European Union to adopt that act and, second, the act in question is liable to affect rights which the individual derives from EU law or to create obligations under EU law in his or her regard (judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraph 107 and the case-law cited).

49 In the present case, the principle that each State has complete and exclusive sovereignty over its airspace is relied upon, in essence, in order for the Court to assess whether the European Union had competence, in the light of that principle, to adopt Regulation No 261/2004 in so far as that regulation applies to passengers on a connecting flight departing from an airport located in the territory of a Member State to an airport located in the territory of a third country, the significant delay of which is caused in a leg of that flight operated in the territory of that third country.

50 Therefore, even though the principle at issue appears only to have the effect of creating obligations between States, it is nevertheless possible, in circumstances such as those of the case which has been brought before the referring court, in which Regulation No 261/2004 is liable to create obligations under EU law as regards the defendant in the main proceedings, that the latter may rely upon that principle and that the Court may thus examine the validity of that regulation in the light of such a principle.

51 However, since a principle of customary international law does not have the same degree of precision as a provision of an international agreement, judicial review must necessarily be limited to the question whether, in adopting the act in question, the institutions of the European Union

made manifest errors of assessment concerning the conditions for applying such a principle (judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraph 110 and the case-law cited).

52 First of all, as has been recalled in paragraphs 26 and 27 above, by virtue of Article 3(1)(a) of Regulation No 261/2004, connecting flights fall within the scope of that regulation on the ground that the passengers have started their journey from an airport located in a Member State. In so doing, that regulation establishes, for the purposes of its applicability, a close connection with the territory of the European Union.

53 Thus, it must be noted that the applicability criterion of Regulation No 261/2004 provided for in Article 3(1)(a) of that regulation does not undermine the conditions for the application of the principle of complete and exclusive sovereignty of a State over its airspace, since it covers passengers departing from an airport located in the territory of a Member State which may therefore fall, in view of such a connection, within the competence of the European Union.

54 Next, it should be pointed out, as the Council of the European Union has done in its observations, that that regulation applies to a long delay caused in a leg of a flight operated in a third country only in limited and clearly defined circumstances in which the flight concerned, taken as a whole, is operated from an airport located in the territory of a Member State. Such a flight and its passengers thus retain a close connection with the territory of the European Union, including for the leg of the flight operated outside the European Union.

55 In that regard, it should be observed, as the Advocate General did in point 64 of his Opinion, that Regulation No 261/2004 is not intended to apply, by virtue of Article 3(1)(a) of that regulation, to flights which are wholly operated in a third country or between two third countries, without any connection with the territory of the European Union.

56 Accordingly, in adopting Regulation No 261/2004, the EU institutions cannot be considered to have committed a manifest error of assessment as regards the conditions for the application of the principle of customary international law according to which each State has complete and exclusive sovereignty over its airspace.

57 Last, it is appropriate to recall the objective of Regulation No 261/2004, which consists, as is apparent from recitals 1 and 4 thereof, in ensuring a high level of protection for passengers.

58 In that regard, it should be noted that, in order to achieve such an objective, the EU legislature may in principle choose to permit a commercial activity, in this instance air transport, to be carried out in the territory of the European Union only on condition that operators comply with the criteria that have been established by the European Union and are designed to fulfil the consumer – and, more particularly, air passenger – protection objectives which it has set for itself (see, by analogy, judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraph 128 and the case-law cited).

59 Furthermore, United Airlines' submissions relating to an alleged breach of the principle of equal treatment between, on the one hand, the passengers on the connecting flight at issue in the main proceedings and, on the other hand, the passengers on only the second leg of that flight do not call into question the conclusion set out in paragraph 56 above.

60 Those two categories of passengers are not, after all, in a comparable situation in so far as the passengers on the connecting flight at issue in the main proceedings, which, in accordance with the case-law cited in paragraph 29 above, must be regarded as constituting a whole for the purposes of the applicability of Regulation No 261/2004, took a flight from an airport located in the territory of a Member State, whereas that is not the case for the passengers who were on only the second leg of that flight, operated from and to airports located in the territory of a third country.

61 In the light of all the foregoing considerations, it must be held that the examination of the second question has disclosed no factor such as to affect the validity of Regulation No 261/2004 in the light of the principle of customary international law according to which each State has complete and exclusive sovereignty over its airspace.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 3(1)(a), read in conjunction with Articles 6 and 7 of 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 flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a passenger on a connecting flight, comprising two legs and subject to a single booking with a Community carrier, departing from an airport located in the territory of a Member State and arriving at an airport located in a third country via another airport in that third country, is entitled to compensation from the third-country air carrier which operated the entirety of that flight acting on behalf of that Community carrier, where that passenger has reached his or her final destination with a delay of more than three hours caused in the second leg of the said flight.**

2. **The examination of the second question referred for a preliminary ruling has disclosed no factor such as to affect the validity of Regulation No 261/2004 in the light of the principle of customary international law according to which each State has complete and exclusive sovereignty over its airspace.**

[Signatures]