

Úrskurður

Samgöngustofu nr. 124/2025 vegna kvörtunar um aflýsingu á flugi Air Greenland nr. GL0711 dagana 2. mars – 8. mars 2025

I. Erindi

Þann 17. apríl 2025 barst Samgöngustofu (SGS) kvörtun frá A (kvartandi). Kvartandi átti bókað far með flugi nr. GL0711 á vegum Air Greenland (AG) þann 2. mars 2025 frá Keflavík til Nuuk. Fluginu var aflýst að sögn kvartanda í alls fjögur skipti á tímabilinu 2., mars til 8. mars 2025. Meðal gagna málsins eru tilkynningar um aflýsingu dagana 1. mars, 5. mars og 8. mars 2025. Var kvartanda boðið nýtt flug með AG vegna hvernar aflýsingar og ákvað kvartandi að lokum að fara fram á endurgreiðslu og ferðaðist aftur til Glasgow frá Keflavík þann 7. mars sl.

Í kvörtuninni kemur fram:

I think it is important to bear in mind when considering my complaint that my flight was cancelled four times in total over 5 days and I was stuck at KEF for those days with no idea of what was going on and whether or not I was going to get to Nuuk or not. The sole purpose of my travel was to visit Greenland with a stop in Reykjavik for one night at the start and end of my trip to allow for any flight issues, as I had been advised to do by Air Greenland and Icelandair.

The support provided by Air Greenland during this debacle was non-existent. There was nobody at the airport to assist (the Icelandair worker who I spoke to at the airport simply told me "it is always a disaster with Air Greenland and you will have to look after yourself and claim it back afterwards". Nobody ever answered the customer care telephone line or the line was out of order (even when I call it now it is out of order) and it took days for them to respond to emails. In the end they cancelled the flight for the fourth time and put me on a flight to Nuuk leaving the day after my flight home from KEF to Glasgow. I was notified of this by email on 6 March so I gave up and flew home KEF to GLA early on 7 March. Air Greenland have been just as bad since I returned home.

Initially they refused to provide me with any flight refund or expenses saying it was my choice to abandon the flight. After many, many emails backwards and forwards (to which they take many days to respond) they have refunded my flight and have now promised to refund my Reykjavik hotel and meal expenses. They are though refusing to pay the change fee for my Icelandair flight saying this was my choice. It was my choice but what was I supposed to do? Had I not changed my flight I would have stayed in Reykjavik two extra nights and would have claimed the accommodation and meal costs from them which would have cost Air Greenland more than the Icelandair change fee. Air Greenland also refuses to pay for my wasted Air BnB accommodation in Nuuk.

I was not able to get a refund for this as I did not cancel it until I realised I had no choice but to abandon my travel plans on 6 March. Air Greenland tell me to claim this on my travel insurance but my travel insurance does not of course cover this and says that Air Greenland should pay. What makes this all worse is that Air Greenland are refusing to pay the required EU compensation saying that all four cancellations were due to weather. This is a lie. The first one was weather, I believe but on the subsequent days the weather was fine and all other flights from KEF took off perfectly fine. I believe that Air Greenland should pay my Icelandair change fee, the Air BnB unused accommodation costs and the required EU compensation. Their appalling lack of customer service should also be investigated and compensated for. From the comments of the Icelandair representative at the airport it is clearly a very common issue. Please take my complain seriously and order the necessary refunds and compensation. I am at the end of my tether with Air Greenland who do not seem to care at all.

Kvartandi fer fram á staðlaðar skaðabætur á grundvelli reglugerðar EB nr. 261/2004 um sameiginlegar reglur um skaðabætur og aðstoð til handa farþegum sem er neitað um far og þegar flugi er aflýst eða mikil seinkun verður, sbr. reglugerð nr. 466/2024 um réttindi flugfarþega.

Kvartandi fer einnig fram á endurgreiðslu kostnaðar vegna vegna breytingagjalds sem kvartandi greiddi til að ferðast fyrr frá Keflavík til Glasgow þann 7. mars sl. og fyrirframgreiddrar gistingar í Nuuk sem kvartandi gat ekki nýtt sér.

II. Málavextir og bréfaskipti

SGS sendi kvörtunina til umsagnar AG með tölvupósti þann 25. apríl 2025. Í svari AG, sem barst þann 9. september 2025, kom eftirfarandi fram:

The complainant, hereinafter referred to as "the passenger," has made a claim for compensation under Regulation 261/2004.

The passenger had booked a flight from Reykjavik (KEF) to Nuuk (GOH), with a scheduled arrival in Nuuk on March 2, 2025, at 18:30 local time.

This case concerns flight GL771 between Reykjavik and Nuuk on March 2, 2025, which was canceled due to adverse weather conditions. As evidence of this, Exhibit A is presented, which is a flight log for GL771, showing that the flight was canceled because the weather conditions were below the minimum limits for a safe landing.

As documentation of the adverse weather conditions, a TAF report for Nuuk (BGGH) airport is presented in Exhibit B. The report was made by the airport's meteorologists and is therefore an external document. The report describes the expected weather conditions for that day.

Since this is a cancellation and not a delay, the assessment of the weather conditions was primarily made based on a weather forecast, not the actual weather conditions. This is because cancellations, by nature, occur prior to the planned execution of the flight, and it is the expected weather conditions at the time of the flight's execution that are decisive.

GL771 had a planned arrival in Nuuk on March 2, 2025, at 18:30 local time (20:00 UTC). The following TAF code was issued at 17:05 UTC: TAF BGGH 021718Z 0218/0318 VRB03KT 9000 OVC030 TEMPO 0218/0223 0600 -SHSN VV003 BECMG 0218/0220 11010KT BECMG 0223/0302 SCT100 TEMPO 0302/0312 BKN050 BECMG 0306/0309 36015KT BECMG 0312/0315 16006KT TEMPO 0312/0318 2000 -SN BKN015= (The airlines' highlights)

From the above code, it can be deduced that between 18:00 UTC and 23:00 UTC, there were snow showers ("SHSN") and a vertical visibility of only 300 feet ("VV003"), corresponding to 91 meters.

Due to the above weather conditions, it was not possible to land in Nuuk. However, the alternative airport, Kulusuk (KUS), was also closed. As documentation for this, Exhibit C is presented, which shows that Kulusuk airport could not be used as an alternative airport for landing GL711 on March 2, 2025. The closure was due to a storm in Kulusuk.

For safety reasons, it is necessary for Kulusuk airport to be open so that it can function as an alternative airport. Since the airport was closed, the flight had to be canceled.

As a result of the above, GL711 was canceled. The passenger was then finally rebooked on GL3711 from Reykjavik to Nuuk, as per the claimant's attached cancellations emails.

Grounds for dismissal of the compensation claim

The cancellation was due to exceptional circumstances. As a general rule, a passenger is entitled to compensation in case of cancellations, as per Article 7 of the Regulation. This rule can be deviated from if there are exceptional circumstances that could not have been avoided, even if all reasonable measures had been taken, as per Article 5, Paragraph 3.

The cancellation in this case was due to adverse weather conditions, which according to the Regulation constitute exceptional circumstances, as outlined in Recitals 14 and 15 of the Regulation. It is argued that the passengers are not entitled to compensation under Article 7 of the Regulation, in accordance with Article 5, Paragraph 3, as explained further below:

Adverse weather conditions constitute exceptional circumstances.

The flight was cancelled due to weather conditions that were incompatible with the planned flight's execution.

Weather conditions are considered exceptional circumstances under the Regulation, including Recital 14.

Weather is one of the few examples of exceptional circumstances explicitly mentioned in the Regulation. It follows that exceptional circumstances can arise due to "weather conditions incompatible with the execution of the particular flight." It has also been established in case law that bad weather incompatible with the delayed or cancelled flight can constitute exceptional circumstances, as per the Supreme Court ruling U2017.2809H. The judgment clarifies that the condition in Recital 14 that the weather must be incompatible with "the execution of the particular flight" should not be understood as a requirement that the weather directly affects the delayed or cancelled flight.

Recital 14 takes into account situations where the effects of adverse weather conditions extend beyond the period in which the exceptional circumstances occur. If a later cancellation or delay can be traced back to weather conditions before the flight, it is still considered a cancellation or delay due to exceptional circumstances. All reasonable measures were taken. Under the Regulation, the airline is exempt from compensation obligations if the cancellation was caused by exceptional circumstances that could not have been avoided even if all reasonable measures were taken, as per Article 5, Paragraph 3. Adverse weather conditions are, by nature, an element that the airline has no control over. Therefore, there is nothing the airline could have done to avoid the exceptional circumstances. The airline could not have planned its resources differently, as the planning of departures occurs long before the actual flight. It was not possible for the airline to account for potential exceptional circumstances lasting several hours when planning the flight rotations.

There is minimal the airline can do to avoid the cancellation, as the above are conditions the airline cannot control.

The airline has therefore taken the measures that were possible. It is unclear what other precautions could have been taken, given that the above circumstances are, by their nature, beyond the airline's control. It is therefore maintained that it was not possible to prevent the situation described above. This was thus outside the airline's control and usual course of activities.

Based on the above, the airline argues that the delay was caused by exceptional circumstances and that the airline took all reasonable measures to minimize the delay. Therefore, the airline should be dismissed from the claim of compensations.

Grounds for dismissal of the refund claim

The complainant has submitted a claim for reimbursement amounting to 1,045.03 euros in compensation.

However, Air Greenland has already refunded the original journey, as well as meals and hotel accommodation in Reykjavik, as per the complainant's attached correspondence with Air Greenland.

Additionally, the passenger is requesting reimbursement for a fee for their new Icelandair ticket. The airline disputes the obligation to pay this, as the passenger has already received

a full refund for the original ticket with Air Greenland. According to Regulation (EC) No 261/2004, Article 8(1), the passenger must be offered the choice between either re-routing or a refund. Air Greenland has documented through the complainant's attached correspondence and cancellation emails, that the passenger was indeed offered this choice and that the passenger chose a refund for the original ticket.

The interpretative guidelines for the regulation state that the choice under Article 8(1) can only be made once, as per point 4.2 of the guidelines. Therefore, Air Greenland is not responsible for the additional costs incurred by the passenger and should be acquitted of the claim related to the alternative tickets.

The passenger is also requesting reimbursement for the unused hotel stay in Nuuk. The expense for the hotel stay is disputed, as it is not documented that the cost was caused by the disruption of the journey, but rather that the cost pertains to the passenger's original hotel accommodation for the trip.

As per Regulation (EC) No 261/2004, Article 9(1)(b), the defendant is only obligated to offer payment for hotel accommodation if an overnight stay for one or more nights becomes necessary or if additional accommodation beyond the passenger's original intention becomes necessary in connection with the re-routing of the journey. Air Greenland therefore disputes liability for this expense.

As a result of the above, the airline should be acquitted of the reimbursement claim

Svar AG var sent kvartanda til umsagnar sama dag. Í svari kvartanda kom fram:

It is all set out in my original complaint and the email exchange attached shows all the cancellations I had to suffer. The communication around the cancellations was awful. No Air Greenland representative was available at the airport, nobody answered the telephone customer care line and the Icelandair agent I spoke to at the airport when I checked in for the first flight literally said to me that Air Greenland are terrible and this happens all the time. I was completely in the dark, kept receiving emails with new flights (which were later cancelled) and the last flight change I had had an outward flight on a date after the return flight!

I don't accept that weather was the issue for the later cancellations. I've said flights left for Greenland on those dates at similar times.

SGS fór fram á frekari upplýsingar um ástæður aflýsinga dagana 5. og 8. mars 2025 með tölvupósti dags. 27. október 2025. Svar barst þann 3. nóvember 2025, þar sem fylgdu veðurgögn og frekari athugasemdir AG.

III. Forsendur og niðurstaða Samgöngustofu

SGS fer með eftirlit með réttindum neytenda samkvæmt ákvæðum XVI. kafla laga um loftferðir nr. 80/2022 og skal grípa til viðeigandi aðgerða til að tryggja að réttindi farþega séu virt, sbr. 2. mgr. 207. gr. laganna.

Farþegar og aðrir sem eiga hagsmuna að gæta geta skotið ágreiningi er varðar fjárhagslegar kröfur og einkaréttarlega hagsmuni samkvæmt ákvæðum XVI. kafla laga um loftferðir til SGS, sbr. 1. mgr. 208. gr. laganna. Náist ekki samkomulag eða sátt skal SGS skera úr ágreiningi með úrskurði.

Samkvæmt 1. mgr. 204. gr. sömu laga er flugrekanda skylt að veita farþegum aðstoð og eftir atvikum greiða þeim bætur, í samræmi við þau skilyrði sem sett eru í reglugerð sem ráðherra setur, ef: tjón hefur orðið vegna tafa á flutningi, farþega er neitað um far, flugi er aflýst eða þegar flutningi er flýtt.

Um réttindi flugfarþega er fjallað í reglugerð EB nr. 261/2004 um sameiginlegar reglur um skaðabætur og aðstoð til handa farþegum sem neitað er um far og þegar flugi er aflýst eða mikil seinkun verður, sem var innleidd hér á landi með reglugerð nr. 466/2024. Samkvæmt 2. gr. reglugerðar nr. 466/2024 er SGS sá aðili sem ber ábyrgð á framkvæmd reglugerðarinnar sbr. 16. gr. reglugerðar EB nr. 261/2004.

Um aflýsingu flugs og þá aðstoð sem flugrekandi skal veita í slíkum tilvikum er fjallað um í 5. gr. reglugerðar EB nr. 261/2004. Samkvæmt 1. mgr. 5. gr. skal farþegum ef flugi er aflýst, boðin aðstoð af hálfu flugrekandans í samræmi við 8. gr. og a-lið 1. mgr. 9. gr. og 2. mgr. 9. gr. Í 8. gr. reglugerðarinnar er fjallað um rétt farþega til þess að fá endurgreitt eða að fá flugleið breytt. Þar kemur nánar tiltekið fram að flugfarþegar eigi eftirfarandi kosta völ; að fá innan sjö daga endurgreitt að fullu upprunalegt verð farmiðans, að breyta flugleið með sambærilegum flutningsskilyrðum til lokaákvörðunarstaðar eins fljótt og auðið er eða að breyta flugleið með sambærilegum flutningsskilyrðum og komast til lokaákvörðunarstaðar síðar meir.

Auk framangreinds gildir að sé flugi aflýst eiga farþegar rétt á skaðabótum frá flugrekanda í samræmi við 7. gr., hafi ekki verið tilkynnt um aflýsingu á þann hátt sem mælt er um í i) – iii) liðum c-liðar 1. mgr. 5. gr. Þetta gildir nema flugrekandi geti sýnt fram á að flugi hafi verið aflýst af völdum óviðráðanlegra aðstæðna sem ekki hefði verið hægt að afstýra jafnvel þótt gerðar hefðu verið allar nauðsynlegar ráðstafanir, sbr. 3. mgr. 5 gr. reglugerðarinnar.

Loftferðalögum nr. 80/2022 og reglugerð EB nr. 261/2004 er ætlað að tryggja ríka vernd fyrir farþega sem neytendur flugþjónustu. Meginreglan samkvæmt reglugerð EB nr. 261/2004 er réttur farþega til skaðabóta skv. 7. gr. reglugerðarinnar sé um að ræða aflýsingu eða mikla seinkun á brottfarartíma flugs og ber að skýra undantekningarreglu 3. mgr. 5. gr. reglugerðarinnar þröngt, sbr. dóm Evrópudómstólsins frá 22. desember 2008, í máli C-549/07 Friederike Wallentin-Hermann v Alitalia.

Staðlaðar skaðabætur

Fyrir liggur í málinu að kvartandi átti bókað far með flugi nr. GL0711 á vegum Air Greenland frá Keflavík til Nuuk þann 2. mars 2025 og að fluginu var aflýst að sögn kvartanda í alls fjögur skipti á tímabilinu 1. til 8. mars 2025. Álitæfni þessa máls er hvort aflýsingar á flugi kvartanda séu bótaskyldar á grundvelli reglugerðar EB nr. 261/2004, sbr. reglugerð nr. 466/2024. Í því samhengi kemur til skoðunar hvort að aflýsingar á flugi kvartanda megi rekja til óviðráðanlegra aðstæðna í skilningi 3. mgr. 5. gr. reglugerðar EB nr. 261/2004.

Við meðferð málsins var sérfræðingur flugrekstrardeildar SGS beðinn um að leggja mat á framlögð veðurgögn AG til að skera úr um hvort að veðuraðstæður í Nuuk á framangreindu tímabili hafi verið þeim hætti að forsvaranlegt hafi verið af hálfu AG að aflýsa flugi kvartanda. Sérfræðingur flugrekstrardeildar SGS staðfesti að veðurspá hefði gefið til kynna líkur á snjókomu og lélegu skyggni undir veðurlágmörkum í GOH. KUS, sem væri varaflugvöllurinn, hefði verið lokaður þannig að ekki hefði verið unnt að reyna við flugið þar sem enginn varaflugvöllur hefði verið tiltækur. Hann staðfesti jafnframt að veðuraðstæður hefðu verið með þessum hætti þá daga sem flugi kvartanda var aflýst.

Með hliðsjón af þeim upplýsingum sem koma fram í svari sérfræðings flugrekstrardeildar SGS er það mat stofnunarinnar að aflýsing á flugum kvartanda dagana 2. til 11. mars 2025 falli í flokk óviðráðanlegra aðstæðna í skilningi 3. mgr. 5. gr. reglugerðar EB nr. 261/2004, sbr. 14. inngangslíður reglugerðarinnar.

Að mati SGS hefur AG þannig sýnt fram á að félagið hafi lagt sig fram við að takmarka afleiðingar af hinum óviðráðanlegu aðstæðum eftir bestu getu. Er kröfu kvartanda um staðlaðar skaðabætur á grundvelli reglugerðar EB nr. 261/2004, sbr. reglugerð nr. 466/2024, því hafnað.

Endurgreiðsla útlagðs kostnaðar

Kvartandi fer fram á endurgreiðslu breytingagjalds sem hann greiddi til að breyta flugi sem hann hafði greitt fyrir frá Keflavík til Glasgow. Í a-lið 5. gr. reglugerðar EB nr. 261/2004 segir að hafi flugi verið aflýst skuli veita farþegum aðstoð skv. 8. og 9. gr. en þar er fjallað um rétt til endurgreiðslu eða að breyta flugleið og í þeim tilfellum sem farþegar velja nýtt flug rétt á mat, drykk og gistingu í samræmi við lengd tafar. Í framlögðum gögnum kemur fram að AG hafi endurgreitt kvartanda upphaflegt flugfargjald sem og kostnað við gistingu og máltíðar í Reykjavík og að kvartandi hafi sjálfur valið endurgreiðslu flugfargjaldsins. Í leiðbeiningar reglum um skýringu reglugerðar EB nr. 261/2004 kemur fram að þegar farþegi hefur valið einn af þremur valkostunum samkvæmt a-c liðum 1. mgr. 8. gr. reglugerðar EB nr. 261/2004 falli aðrar skyldur flugrekanda skv. ákvæðinu niður. Með hliðsjón af framangreindu telur SGS að AG hafi uppfyllt skyldur sínar skv. framangreindum ákvæðum reglugerðar EB nr. 261/2004 og er kröfum kvartanda um endurgreiðslu breytingagjaldsins hafnað.

Kvartandi fer einnig fram á endurgreiðslu fyrirframgreiddrar gistingar í Nuuk, sem hann gat ekki nýtt sér vegna aflýsingarinnar. SGS hefur ekki ákvörðunarvald um slíkar bótakröfur skv. reglugerð EB nr. 261/2004, lögum um loftferðir nr. 80/2022 og reglugerðum með stoð í þeim lögum. Verður kvartandi því að leita réttar síns fyrir þeirri kröfu sinni á öðrum vettvangi.

Úrskurðarorð

Kröfu kvartanda um staðlaðar skaðabætur úr hendi Air Greenland vegna aflýsingar á flugi nr. GL0711 dagana 2. til 8. mars 2025 samkvæmt reglugerð EB nr. 261/2004, sbr. reglugerð nr. 466/2024, er hafnað.

Kröfu kvartanda um endurgreiðslu breytingagjalds á flugi með öðrum flugrekanda þann 7. mars 2025 er hafnað.

Kröfur kvartanda um endurgreiðslu kostnaðar við fyrirframgreidda gistingu er vísað frá.

Samkvæmt 4. mgr. 208. gr. laga um loftferðir nr. 80/2022 verður úrskurði Samgöngustofu ekki skotið til annarra stjórnvalda. Þegar úrskurður hefur verið kveðinn upp geta aðilar lagt ágreining sinn fyrir dómstól á venjulegan máta. Málshöfðun frestar ekki heimild til aðfarar skv. 6. mgr. 208. gr.

Reykjavík, 24. nóvember 2025

Ómar Sveinsson

Ludvig Árni Guðmundsson