



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-12/11
Denise McDonagh v Ryanair Ltd

According to the Advocate General, Mr Bot, the air carrier must provide care to passengers whose flights have been cancelled because of extraordinary circumstances such as the closure of airspace following the eruption of the Eyjafjallajökull volcano

EU law does not imply either release from, or temporal or monetary limitation of, the obligation to provide care to passengers (accommodation, meals, refreshments)

Where flights have been cancelled, the air carrier is required under EU law ¹ to provide assistance to the passengers concerned and to pay them compensation. As regards the obligation to provide assistance and in order to meet the immediate needs of such passengers, the air carrier must provide, free of charge, meals and refreshments in a reasonable relation to the waiting time and, where necessary, hotel accommodation and transport between the airport and the place of accommodation, and must place at their disposal means of communicating with third parties. The air carrier is required to meet that obligation even where the cancellation of the flight has been caused by extraordinary circumstances, that is to say, circumstances which could not have been avoided even if all reasonable measures had been taken. As regards the obligation to pay compensation, on the other hand, the air carrier is not obliged to do so if it can prove that the cancellation was caused by extraordinary circumstances.

Following the eruption of the Eyjafjallajökull volcano in Iceland, the airspace over most of northern Europe – including Irish and UK airspace, in particular – was closed between 15 and 23 April 2010 on account of the risk represented by the volcanic ash cloud. From then until 17 May 2010, the airspace of a number of Member States to and from which Ryanair provided services was sporadically and intermittently closed.

Ms McDonagh was one of the passengers whose flight from Faro to Dublin, scheduled for 17 April 2010, was cancelled because of the volcanic eruption. Flights between continental Europe and Ireland did not resume until 22 April 2010 and Ms McDonagh was finally able to return to Ireland on 24 April 2010. According to Ms McDonagh, Ryanair did not provide her with the necessary assistance and it is required to pay her around EUR 1 130 by way of compensation or damages, to cover the costs which she incurred for meals, refreshments, accommodation and transport.

The Dublin Metropolitan District Court (Ireland), which is hearing the dispute, asks the Court of Justice essentially whether the closure of airspace owing to the eruption of a volcano is covered by the notion of 'extraordinary circumstances', requiring the air carrier to provide care for the passengers, or whether it falls within a category of events above and beyond extraordinary circumstances, possibly releasing the carrier from that obligation. Additionally, the Court is asked to give a ruling, in particular, on the question whether the obligation to provide care must be limited, in temporal or monetary terms, in those circumstances.

The Advocate General, Mr Yves Bot, points out first of all that the notion of 'extraordinary circumstances' is not defined in EU law. He explains that the scope of that term must be

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 flights (OJ 2004 L 46, p. 1).

determined in accordance with its usual meaning in everyday language, account also being taken of the context in which it is used and the purpose of the legislation of which it forms part. In everyday language, the term 'extraordinary circumstances' refers to all circumstances over which the air carrier has no control: an event which is not inherent in the normal exercise of the activity of the air carrier concerned and is beyond the actual control of that carrier on account of its nature or origin. In the view of the Advocate General, all events which meet that description are bracketed together under a single notion, leaving no room for a separate category of 'particularly extraordinary' events which would fully release the air carrier from its obligations.

That assessment is borne out both by the aim pursued by the relevant EU legislation – a high level of protection for air passengers – and by the context in which the term is used, which relates to the particular vulnerability of passengers who find themselves stranded at an airport on account of extraordinary circumstances.

According to the Advocate General, that is why the EU legislature took the view that, by contrast with the obligation for the air carrier to pay compensation – which does not apply where the air carrier proves that the cancellation of the flight was the result of extraordinary circumstances which could not have been avoided – the obligation to provide care must remain compelling, whatever the event which resulted in the cancellation and whether or not the air carrier was responsible for that event. On that point, the Advocate General believes that the provision of care to air passengers is especially important and essential where their flights have been cancelled as a result of the eruption of a volcano which has caused the airspace of a number of Member States to be closed for several days, thus forcing some passengers to remain at the airport – very often a long way from home – until that airspace is reopened.

In consequence, the Advocate General concludes that circumstances such as the closure of airspace owing to the eruption of a volcano constitute extraordinary circumstances for the purposes of EU law.

Additionally, after observing that the EU legislation does not imply any limitation – temporal or monetary – of the obligation to provide care to the passengers, the Advocate General explains that the provision of care is particularly important in the case of extraordinary circumstances which persist over a long time. It is precisely in situations where the waiting period occasioned by the cancellation of a flight is particularly lengthy that it is necessary to ensure that an air passenger whose flight has been cancelled can have access to essential goods and services throughout that period. A limitation of the obligation to provide care would in some measure deprive the EU legislation of its effectiveness, since after a few days the air passengers concerned would be abandoned to their fate.

According to the Advocate General, that finding cannot call into question the validity of the EU legislation in relation to the principles of proportionality or non-discrimination. It does not appear to be disproportionate to impose on air carriers such an obligation to provide care in so far as they are free to pass on the resulting costs to airline ticket prices. What is more, that is a policy which has already been put into effect by Ryanair, which introduced a special levy in April 2011 in order to cover the costs which it had incurred in providing care to passengers whose flights had been cancelled owing to the eruption of the Icelandic volcano.

Nor, in the view of the Advocate General, does the obligation to provide care conflict with the general principle of non-discrimination, because the various modes of transport are not interchangeable as regards conditions of use. Accordingly, the respective situations of operators in the various sectors of activity relating to each of those modes of transport are not comparable. Furthermore, with regard to air transport, passengers whose flights are cancelled or significantly delayed are in a situation which is objectively different from the situation of passengers using other means of transport in the event of incidents of the same nature.

In consequence, the Advocate General proposes that the Court should state in reply that the EU legislation does not imply any release from or limitation of the obligation to provide care

for passengers whose flights have been cancelled owing to extraordinary circumstances. That finding cannot call into question the validity of that legislation.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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](#) of the Opinion is published on the CURIA website on the day of delivery.

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