



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-509/11
ÖBB-Personenverkehr AG

According to Advocate General Jääskinen, rail passengers must have part of the cost of their ticket refunded in case of significant delay even if that delay is caused by *force majeure*

A railway company may not exclude its refund obligation in such cases

The Regulation on rail passengers' rights and obligations¹ provides that a passenger who is facing a delay of one hour or more may request a partial refund of the ticket price from the railway company. This compensation is a minimum of 25% of the ticket price for delays of one hour to 119 minutes and a minimum of 50% for delays of two hours or more. The Regulation does not contain any exemption from this right to compensation in cases where the delay is caused by *force majeure*, such as adverse weather conditions, damage to the railway infrastructure or industrial action.

The Austrian Verwaltungsgerichtshof (Administrative Court) has asked the Court of Justice whether a railway company may nevertheless exclude its obligation to pay compensation when a delay, missed connection or cancellation is caused by *force majeure*. The Verwaltungsgerichtshof has to decide on an action brought by the Austrian railway company ÖBB-Personenverkehr AG by which it challenges the decision of the Austrian Rail Network Control Commission obliging ÖBB to delete a provision in its general terms and conditions which excludes compensation in cases of *force majeure*.

In his opinion delivered today, **Advocate General Niilo Jääskinen considers that a railway company may not exclude its obligation under the Regulation to pay compensation of the ticket price in cases where the delay is caused by *force majeure*.**

He observes that there is nothing in the text of the Regulation to limit this obligation in cases of *force majeure*. While liability limitations contained in international rules on transport by train², to which the Regulation refers, do not apply to the refund of ticket price in case of delay, the fact that the Regulation aims to enhance consumer protection prevents any restriction of such a refund from being inferred from the general EU concept of *force majeure*. Had the EU legislature wanted to limit this obligation on grounds of *force majeure*, this would have been clearly indicated in the wording of the Regulation. The Advocate General furthermore rejects the application by analogy of *force majeure* rules contained in Regulations on passengers' rights within other transport sectors, namely air, boat and bus travel. He notes that, in the context of travel by train, the most usual causes of *force majeure*, namely adverse weather conditions, damage to infrastructure, and industrial action, have a foreseeable statistical frequency and can be taken into account when calculating ticket pricing. Also, the situation of companies operating in the different transport sectors is not comparable since the different modes of transport are not interchangeable as regards the conditions of their use.

As regards a further question of the Verwaltungsgerichtshof about the powers of the national body responsible for the enforcement of the Regulation, Advocate General Jääskinen proposes to

¹ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ 2007 L 315, p. 14.

² Uniform Rules concerning the contract for international carriage of passengers and luggage by rail ('CIV').

answer that the Regulation does not allow this body to prescribe, with binding effect on a railway company whose compensation terms do not conform to the criteria laid down in that Regulation, the specific content of the compensation scheme to be used by that railway company when national law permits that body only to declare such compensation terms null and void.

However, the Advocate General adds that the legal obligation of a railway company to comply with the Regulation does not depend on the powers of national body or the sanctions available to it. This means that ÖBB are legally bound by the Regulation, and that passengers would be entitled to rely on it in any civil proceedings brought against this railway company with respect to ticket price compensation.

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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