



Press and Information

Court of Justice of the European Union

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Judgment in Case C-509/11
ÖBB-Personenverkehr AG

Rail passengers are entitled to a partial refund of the price of their train ticket in the event of significant delay, even where that delay is attributable to force majeure

Carriers cannot rely on rules of international law which exempt them in cases of force majeure from paying compensation for loss suffered as a result of delay to avoid their obligation to refund

The regulation on rail passengers' rights and obligations¹ provides that the liability of railway undertakings in the case of delay is governed by the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail², subject to the applicable provisions of the regulation.

In accordance with the Uniform Rules, which are part of international law and are reproduced in the annex to the regulation, the railway carrier is liable to the passenger for the loss or damage resulting from the fact that, by reason of the late running of a train, his journey cannot be continued or continuation of the journey could not reasonably be required the same day. However, the carrier is exempt from liability where the delay is attributable to force majeure, namely, inter alia, circumstances not connected with the operation of the railway which the carrier could not avoid.

The regulation provides that a passenger facing a delay of an hour or more may request a partial reimbursement of the price paid for the ticket from the railway undertaking. The amount of that compensation is at least 25% of that price in the event of a delay of between 60 and 119 minutes and 50% in the event of a delay of 120 minutes or more. The regulation provides for no exception to that right to compensation where the delay is attributable to force majeure.

Against that background, the Verwaltungsgerichtshof (Administrative Court, Austria) has asked the Court of Justice whether a railway undertaking may be discharged from its obligation to pay compensation where the delay is attributable to force majeure. The Administrative Court is required to rule on an action brought by Austrian railway carrier ÖBB-Personenverkehr AG against the Austrian rail network control commission's decision requiring it to delete from its general terms and conditions a provision which excluded any right to compensation in cases of force majeure.

In its judgment today, the Court finds, first, that **the regulation itself does not exempt railway undertakings from the obligation to pay compensation where the delay is attributable to force majeure.**

The Court then notes that the **Uniform Rules**, which exempt the carrier from its obligation to pay compensation in cases of force majeure, relate only to the right of passengers **to receive compensation for damage or loss** resulting from the delay or cancellation of a train. On the other hand, the compensation provided for by the **regulation**, calculated on the basis of the ticket price, has a very different purpose, which is to **compensate the passenger for the consideration provided for a service which was not supplied in accordance with the transport contract**. It is also a fixed-rate standard form financial compensation, unlike that provided for under the system

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, which is part of the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999.

of liability established by the Uniform Rules, which requires an individual assessment of the damage suffered. Moreover, as those two liability systems are quite different, in addition to receiving fixed rate compensation, passengers may also bring a claim for compensation under the Uniform Rules.

In those circumstances, **the Court finds that the carrier's grounds of exemption from liability under the Uniform Rules are not applicable in the context of the liability system established by the regulation.** In that regard, the Court notes that the regulation's *travaux préparatoires* unequivocally indicate that the EU legislature intended to extend the obligation to pay compensation to those cases in which carriers are exempt from their liability to pay compensation under the Uniform Rules.

The Court also rejects the argument that the rules relating to force majeure set out in the provisions on the rights of passengers travelling by other modes of transport, such as by plane, boat, bus and coach, are applicable by analogy. Since the different modes of transport are not interchangeable as regards the conditions of their use, the situation of undertakings operating in different transport sectors is not comparable.

In those circumstances, the Court finds that **a railway undertaking may not include in its general terms and conditions of carriage a clause under which it is exempt from its obligation to pay compensation in the event of a delay where the delay is attributable to force majeure.**

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 judgment is published on the CURIA website on the day of delivery.

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