Case C-344/04

The Queen on the application of: International Air Transport Association and European Low Fares Airline Association

V

Department for Transport

(Reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court))

(Carriage by air — Regulation (EC) No 261/2004 — Articles 5, 6 and 7 — Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights — Validity — Interpretation of Article 234 EC)

Opinion of Advocate General Geelhoed delivered on 8 September 2005		I - 409
Judgment of the Court (Grand Chamber), 10 January 2006		I - 443

SUMMARY - CASE C-344/04

Summary of the Judgment

- 1. Preliminary rulings Reference to the Court Challenge to the validity of a Community act before a national court
 (Art. 234, para. 2, EC)
- 2. Transport Carriage by air Regulation No 261/2004 Measures to assist and take care of passengers in the event of a long delay to a flight (European Parliament and Council Regulation No 261/2004, Art. 6; Montreal Convention 1999)
- 3. Acts of the institutions Statement of reasons Obligation Scope (Art. 253 EC; European Parliament and Council Regulation No 261/2004, Arts 5, 6 and 7)
- 4. Transport Carriage by air Regulation No 261/2004 Measures to assist, take care of and compensate passengers in the event of cancellation of, or a long delay to, a flight (European Parliament and Council Regulation No 261/2004, Arts 5, 6 and 7)
- 5. Transport Carriage by air Regulation No 261/2004 Measures to assist, take care of and compensate passengers in the event of cancellation of, or a long delay to, a flight (European Parliament and Council Regulation No 261/2004, Arts 5, 6 and 7)
- The fact that the validity of a Community act is contested before a national court is not in itself sufficient to warrant referral of a question to the Court of Justice for a preliminary ruling.

the act is completely valid, given that, in so doing, they are not calling into question the existence of the Community act.

Courts against whose decisions there is a judicial remedy under national law may examine the validity of a Community act and, if they consider that the arguments put forward before them by the parties in support of invalidity are unfounded, they may reject them, concluding that

On the other hand, where such a court considers that one or more arguments for invalidity of a Community act which have been put forward by the parties or, as the case may be, raised by it of its own motion are well founded, it must stay proceedings and make a reference to the Court for a preliminary ruling on the act's validity. bring actions for damages by way of redress on an individual basis from the carriers liable for damage resulting from that delay, but does not shield those carriers from any other form of intervention

(see paras 28-30, 32, operative part 1)

2. The measures to assist and take care of passengers in the event of a long delay to a flight which are prescribed in Article 6 of Regulation No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights constitute standardised and immediate measures to redress the damage which is linked to the inconvenience that delay in the carriage of passengers by air causes.

The standardised and immediate measures prescribed in Article 6 of Regulation No 261/2004 do not prevent the passengers concerned, should the same delay also cause them damage conferring entitlement to compensation, from being able to bring in addition actions to redress that damage under the conditions laid down by the Montreal Convention.

(see paras 44-48)

These measures are not among those the institution of which is regulated by the Montreal Convention for the Unification of Certain Rules for International Carriage by Air and cannot therefore be considered inconsistent with the Convention.

That Convention governs the conditions under which, after a flight has been delayed, the passengers concerned may Articles 5, 6 and 7 of Regulation No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights are not invalid by reason of breach of the obligation to state reasons.

Regulation No 261/2004 clearly discloses the essential objective pursued by the institutions and thus cannot be required to contain a specific statement of reasons for each of the technical choices made. Since the objective of protecting passengers required acceptance of standardised and effective compensatory measures which could not give rise to discussion at the very moment when they were to be applied, a situation which the defence of extraordinary circumstances would not have failed to bring about, the Community legislature was able, without breaching its obligation to state reasons, to refrain from setting out the reasons why it considered that operating air carriers could not rely on such a defence in order to be exempted from their obligations to assist and take care of passengers laid down in Articles 5 and 6 of the regulation. Likewise, the Community legislature was able, without rendering the act in question unlawful, to lay down in Article 7 the principle that fixed compensation was payable in the event of cancellation of a flight and the amount of the compensation without setting out the reasons why it had chosen that measure and that amount.

(see paras 69-70, 72, 77)

 Given that the Community legislature is allowed a broad discretion in the field of the common transport policy, the legality, from the point of view of observance of the principle of proportionality, of a measure adopted in that field can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue.

The measures to assist, care for and compensate passengers that are prescribed in Articles 5, 6 and 7 of Regulation No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights do not appear manifestly inappropriate to the objective pursued by the Community legislature, which relates to strengthening protection for passengers who suffer cancellation of, or long delays to, flights. On the contrary, the measures prescribed by Articles 5 and 6 of the regulation are in themselves capable of immediately redressing some of the damage suffered by those passengers and therefore enable a high level of passenger protection to be ensured. Furthermore, the criteria adopted for determining the passengers' entitlement to those measures, namely the length of the delay and the wait for the next flight or the time taken to inform them of the flight's cancellation, do not appear in any way unrelated to the requirement for proportionality. Also, given that the standardised and immediate compensatory measures at issue vary according to the significance

of the damage suffered by the passengers, they likewise do not appear to be manifestly inappropriate merely because carriers cannot rely on the defence of extraordinary circumstances. circumstances defence enabling air carriers to be exempted from paying that compensation and of the conditions restricting the application of this obligation. Furthermore, the amount of the compensation, set on the basis of the distance of the flights concerned, likewise does not appear excessive.

Next, it has not been established that if passengers were to take out voluntary insurance to cover the risks inherent in flight delays and cancellations, that would in any event make it possible to remedy the damage suffered by passengers on the spot. Such a measure cannot, therefore, be regarded as being more appropriate to the objective pursued than those chosen by the Community legislature.

(see paras 80, 82, 84-88, 91)

Also, since the harmful consequences to which a delay gives rise are in no way related to the price paid for a ticket, the argument that the measures chosen to alleviate those consequences should have been determined in proportion to the cost of the ticket cannot be upheld.

5. Articles 5, 6 and 7 of Regulation No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, which impose the same obligations on all air carriers, are not invalid by reason of a breach of the principle of equal treatment, even though such obligations are not placed on other means of transport.

Finally, the compensation prescribed in Article 7 of the regulation, which passengers may claim when they have been informed of a flight cancellation too late, does not appear manifestly inappropriate to the objective pursued, given the existence of the extraordinary

First, the situations of undertakings operating in different transport sectors are not comparable since modes of transport are not interchangeable as regards the conditions of their use.

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Second, with regard to air transport, passengers whose flights are cancelled or subject to a long delay are in an objectively different situation from that experienced by passengers on other means of transport in the event of incidents of the same nature.

Furthermore, the damage suffered by passengers of air carriers in the event of cancellation of, or a long delay to, a flight is similar whatever the airline with which they have a contract and is unrelated to the pricing policies operated by the airline. Accordingly, if the Community legislature is not to infringe the principle of equality, having regard to the aim pursued by the regulation of increasing protection for all passengers of air carriers, it is incumbent upon it to treat all airlines identically.

(see paras 96-99)