

Anonymised version

Translation

C-370/19 — 1

Case C-370/19

Request for a preliminary ruling

Date lodged:

10 May 2019

Referring court:

Amtsgericht Hamburg (Germany)

Date of the decision to refer:

30 April 2019

Applicant:

GE

Defendant:

Société Air France

[...]

Amtsgericht Hamburg (Local Court, Hamburg, Germany)

[...]

Order

In the case

GE, [...] Schweringen

applicant,

[...]

Societe AIR FRANCE S.A., [...] Roissy Charles de Gaulle Cedex, France

defendant,

[...]

the Amtsgericht Hamburg [...] hereby orders on 30 April 2019:

The proceedings are stayed.

The following question on the interpretation of EU law shall be referred to the Court of Justice of the European Union pursuant to Article 267 TFEU:

Does a trade union organised strike by the staff of an operating air carrier constitute an ‘extraordinary circumstance’ within the meaning of Article 5(3) of Regulation (EC) No 261/2004?

[Or. 2]

Grounds

1. [...] Stay of proceedings [...].
2. The [...] determination of the dispute [...] depends on the preliminary ruling to be given by the Court of Justice of the European Union in answering the question set out in the operative part:

Description of the subject matter of the case

3. The applicant claims compensation in the amount of EUR 600 from the defendant.
4. The applicant made a single booking through an online travel portal for a flight from Detroit (DTW) to Paris (CDG) on 29 July 2016 (AF377) with a direct connecting flight to Hamburg (HAM) on 30 July 2016 (AF1710). Both flights were to be operated by the defendant. The feeder flight, AF377, was cancelled. The applicant only discovered this at the airport in Detroit. The applicant reached Hamburg by means of replacement flights with a total delay of around 18 hours. The reason for the cancellation was a strike by the defendant’s cabin crew on 29 July 2016.

[National procedural law] [...]

[...]

[Or. 3]

National case law relevant to the question referred

6. The Bundesgerichtshof (Federal Court of Justice, Germany) has held, by judgment of 21 August 2012 [...], that [...]:
 1. **Where a trade union, in the context of a pay dispute, calls for industrial action by the pilots of an airline, this can lead to extraordinary circumstances within the meaning of Article 5(3) of the Air Passenger Rights Regulation.**
 2. **The airline is in this case exempt from paying compensation in respect of the cancellation of those flights which it cancels in order to adapt the flight timetable to the anticipated effects of the call to strike.**

Legal arguments of the parties

7. The applicant submits that a strike by [an air carrier's] own cabin crew does not constitute an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation (EC) No 261/2004. In his view, the Court of Justice made clear, by its judgment of 17 April 2018 (Case C-195/17), that the right of air passengers to compensation is specifically not dependent on whether a strike is or is not lawful under the relevant national employment law and collective agreements. Rather, events may be classified as 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 only if, by their nature or origin, they are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control [...].
8. The defendant contends that, unlike a 'wildcat strike', a trade union strike is protected by EU law and by Article 28 of the Charter of Fundamental Rights and that to interpret the decision of the Court of Justice of 17 April 2018 (C-195/17) as encompassing also trade union organised strikes would mean an infringement of EU law, as may indeed be inferred from recital 14 of Regulation (EC) No 261/2004, which refers to strikes in general as **[Or. 4]** an 'extraordinary circumstance' [...].

Provisional legal assessment of the referring court

9. The referring court assumes that, if even a 'wildcat strike' is to be regarded as an event within the control [of the air carrier concerned], a trade union organised strike by [the air carrier's] own staff must *a fortiori* be considered to be within its control (in that the air carrier, for example, can seek agreement with the trade union concerned), so that 'extraordinary circumstances' would appear not to exist.

Current stage of the proceedings [before the national court]

[...]

[Signatures] [...]

[...]

WORKING DOCUMENT