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Press and Information

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Judgment of the Court of Justice in Case C-549/07

Friederike Wallentin-Hermann v Alitalia

**AN AIR CARRIER MAY NOT AS A GENERAL RULE REFUSE TO PAY
COMPENSATION TO PASSENGERS FOLLOWING THE CANCELLATION OF A
FLIGHT ON ACCOUNT OF TECHNICAL PROBLEMS IN THE AIRCRAFT**

Compensation may however be refused if the technical problems stem from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier and are beyond its actual control

The Regulation on compensation and assistance to air passengers¹ provides that, in case of cancellation of a flight, the passengers concerned have the right to compensation by the air carrier unless they are informed of the cancellation of the flight in due time. An air carrier is not however obliged to pay that compensation if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

Mrs Wallentin-Hermann booked three seats on a flight with Alitalia from Vienna to Brindisi (Italy) via Rome for herself, her husband and her daughter. The flight was scheduled to depart from Vienna on 28 June 2005 at 6.45 a.m. and to arrive at Brindisi on the same day at 10.35 a.m. After checking in, the three passengers were informed, five minutes before the scheduled departure time, that their flight had been cancelled. They were subsequently transferred to an Austrian Airlines flight to Rome, where they arrived at 9.40 a.m., that is 20 minutes after the time of departure of their connecting flight to Brindisi, which they therefore missed. Mrs Wallentin-Hermann and her family arrived at Brindisi at 14.15 p.m.

The cancellation of the Alitalia flight from Vienna resulted from a complex engine defect in the turbine which had been discovered the day before during a check. Alitalia had been informed of the defect during the night preceding that flight. The repair of the aircraft, which necessitated the dispatch of spare parts and engineers, was completed on 8 July 2005.

Following Alitalia's refusal to pay her compensation of EUR 250 and EUR 10 for telephone charges, Mrs Wallentin-Hermann brought legal proceedings. Alitalia having lodged an appeal

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, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

against the judgment at first instance which found against it, the Commercial Court, Vienna, must now decide whether the technical problems which led to the cancellation of the flight were covered by ‘extraordinary circumstances’ which exempt from the obligation to pay compensation. The Commercial Court made a reference to the Court of Justice of the European Communities to enable it to interpret that concept.

In its judgment of today, the Court finds that in the light of the specific conditions in which carriage by air takes place and the degree of technological sophistication of aircraft, air carriers are confronted as a matter of course in the exercise of their activity with various technical problems to which the operation of those aircraft inevitably gives rise. The resolution of a technical problem caused by failure to maintain an aircraft must therefore be regarded as inherent in the normal exercise of an air carrier’s activity. Consequently, **technical problems which come to light during maintenance of aircraft or on account of failure to carry out such maintenance do not constitute, in themselves, ‘extraordinary circumstances’.**

However, it is not ruled out that technical problems are covered by ‘exceptional circumstances’ to the extent that they stem from events which are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. That would be the case, for example, in the situation where it was revealed by the manufacturer of the aircraft comprising the fleet of the air carrier concerned, or by a competent authority, that those aircraft, although already in service, are affected by a hidden manufacturing defect which impinges on flight safety. The same would hold for damage to aircraft caused by acts of sabotage or terrorism.

The Court states that, since not all extraordinary circumstances confer exemption, **the onus is on the party seeking to rely on them to establish that, even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal, it would clearly not have been able** – unless it had made intolerable sacrifices in the light of the capacities of its undertaking at the relevant time – **to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight.** The fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken all reasonable measures so that it is relieved of its obligation to pay compensation.

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Languages available: all

The full text of the judgment may be found on the Court’s internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-549/07>

It can usually be consulted after 18:00 (CET) on the day judgment is delivered.

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Pictures of the delivery of the judgment are available on EbS “Europe by Satellite”, a service provided by the European Commission, Directorate-General Press and Communications,

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