



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 44/17

Luxembourg, 4 May 2017

Judgment in Case C-315/15

Marcela Pešková and Jirí Pešká v Travel Service a.s.

A collision between an aircraft and a bird is an extraordinary circumstance which may exempt the air carrier from its obligation to pay compensation in the event that a flight is delayed significantly

However, where an authorised expert finds after the collision that the aircraft concerned is airworthy, the carrier cannot justify the delay by invoking the need to carry out a second check

On 10 August 2013, Ms Marcela Pešková and Mr Jirí Pešká wished to travel from Burgas (Bulgaria) to Ostrava (Czech Republic) by taking a flight operated by the Czech airline Travel Service. Before its departure to Ostrava, the aircraft in question had already flown from Prague to Burgas, from Burgas to Brno (Czech Republic) and from Brno to Burgas.

During the flight from Prague to Burgas, a technical failure in a valve was found. Its repair took 1 hour and 45 minutes. Subsequently, according to Travel Service, the aircraft collided with a bird during the landing of the flight from Burgas to Brno, which meant that the aircraft's technical condition had to be checked. That check was first carried out by a local company authorised to do so. Nonetheless, the owner of the aircraft, the company Sunwing, insisted that a Travel Service technician travel to Brno from another town in the Czech Republic in order to check that the aircraft was indeed in an airworthy condition. Ultimately, neither check found any damage that might call into question the airworthiness of the aircraft.

As a result of those two unexpected events, Ms Pešková and Mr Pešká's flight to Ostrava was delayed by 5 hours and 20 minutes.

Ms Pešková and Mr Pešká subsequently brought an action before the Obvodní soud pro Prahu 6 (Prague 6 District Court, Czech Republic) claiming that Travel Service should pay them CZK 6 825 (approximately €250). In their submission, the EU Regulation on compensation for air passengers,¹ as interpreted by the Court of Justice,² granted them the right to such compensation since their flight had arrived at the destination with a delay of three hours or more.

In that context, the Obvodní soud pro Prahu 6 refers several questions to the Court. The Czech court wishes to know, inter alia, whether the collision of an aircraft with a bird is an extraordinary circumstance, the occurrence of which may exempt the airline from its obligation to pay compensation in the event that a flight is delayed by three hours or more. According to the regulation and the Court's case-law, an air carrier is not obliged to pay 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 in that respect.

By its judgment delivered today, the Court notes, first of all, that extraordinary circumstances within the meaning of the regulation are events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier and are outside that carrier's actual control. It also notes that the premature failure of certain parts of an aircraft does not constitute an extraordinary circumstance, since such a breakdown remains intrinsically linked to the operating system of the

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).

² Judgment of the Court of 19 November 2009, *Sturgeon* (C-402/07 and C-432/07), see also Press Release No 102/09.

aircraft. The maintenance and proper functioning of the aircraft are the responsibility of the air carrier.

However, the Court holds that a collision between an aircraft and a bird, as well as any damage caused by that collision, are not intrinsically linked to the operating system of the aircraft, with the result that such a collision is not by its nature or origin inherent in the normal exercise of the activity of the air carrier concerned and is outside its actual control. **Accordingly, a collision between an aircraft and a bird is an extraordinary circumstance within the meaning of the regulation.**

In that context, the Court notes that the air carrier is to be released from its obligation to pay passengers compensation if it can prove (i) that the cancellation or delay of three hours or more is caused by an extraordinary circumstance which could not have been avoided even if all reasonable measures had been taken and (ii) that all measures were taken to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight or its delay by three hours or more.

As to whether Travel Service took all reasonable measures **after the collision** to prevent the flight being delayed, the Court notes that it appears that the aircraft in question was checked at the airport in Brno by a local expert authorised to do so under the applicable rules. In those circumstances, the Court considers that **a second check of the aircraft was not necessary in order to ensure the airworthiness of the aircraft and therefore the resulting delay cannot be justified** as regards the obligation to pay compensation laid down by the regulation.

As to whether Travel Service took all reasonable measures to prevent the collision in question, the Court emphasises that **the air carrier cannot be obliged to take measures which would require it to make intolerable sacrifices in the light of the capacities of its undertaking.** However, although **the air carrier may be required to take certain preventative measures in order to reduce or even prevent the risks of any collisions with birds, it is not responsible for the failure of other entities** (such as, inter alia, airport managers or the competent air traffic controllers) **to fulfil their obligations to take the preventative measures for which they are responsible.**

Lastly, the Court holds that, in the event that a significant delay to a flight is caused not only by an extraordinary circumstance which could not have been avoided by measures appropriate to the situation and which was subject to all reasonable measures by the air carrier to avoid the consequences thereof (a collision of the aircraft with a bird), but also by another circumstance for which the air carrier is responsible (a technical problem with the aircraft), the delay caused by the extraordinary circumstance must be deducted from the total length of the delay in arrival of the flight in order to assess whether the part of the delay for which the carrier is responsible is equal or greater than three hours and must therefore be the subject of compensation.

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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