



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 45/19

Luxembourg, 4 April 2019

Judgment in Case C-501/17
Germanwings v Wolfgang Pauels

An air carrier is only required to compensate passengers for a delay of three hours or more where an aircraft tyre is damaged by a screw lying on the runway if it fails to prove that it deployed all means at its disposal for limiting the delay of the flight

Proceedings between a passenger and the air carrier Germanwings are pending in respect of a claim for compensation for the delay of a flight operated by Germanwings.

Mr Wolfgang Pauels booked a flight from Dublin (Ireland) to Düsseldorf (Germany) with Germanwings. That flight was delayed in arrival by 3 hours and 28 minutes.

Germanwings refused to pay compensation to Mr Pauels on the ground that the delay in the flight in question was due to damage to an aircraft tyre caused by a screw lying on the runway, circumstances which, it contends, must be regarded as extraordinary within the meaning of the EU regulation on air passenger rights¹ and its obligation to pay compensation under that regulation as thereby excluded.

The Landgericht Köln (Regional Court, Cologne, Germany) before which the proceedings were brought decided to refer a question to the Court of Justice for a preliminary ruling in order to ascertain whether damage to an aircraft tyre caused by a screw lying on the runway (foreign object damage) does in fact amount to extraordinary circumstances.

In today's judgment, the Court makes clear that an air carrier is not obliged to pay compensation to passengers if it is able to prove that the cancellation or delay in arrival of a flight equal to or in excess of three hours was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken and, where such circumstances do arise, that it adopted measures appropriate to the situation, deploying all its resources in terms of staff or equipment and the financial means at its disposal in order to avoid that situation from resulting in the cancellation or long delay of the flight in question, without the air carrier being required to make intolerable sacrifices in the light of the capacities of its undertaking at the relevant time.

Thus, the Court reiterates that events may be classified as **extraordinary circumstances** within the meaning of the air passenger rights regulation **if, by their nature or origin, they are not inherent in the normal exercise of the activity of the air carrier concerned and are outside that carrier's actual control.**

The Court considers that, although air carriers are regularly faced with damage to the tyres of their aircraft, **where the malfunctioning of a tyre is the sole result of impact with a foreign object lying on the airport runway, it cannot be regarded as inherent, by its nature or origin, in the normal exercise of the activity of the air carrier concerned.** In addition, **those circumstances are outside that carrier's actual control.** They are therefore extraordinary circumstances within the meaning of the air passenger rights regulation.

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).

However, in order for its obligation to pay compensation under the air passenger rights regulation to be excluded, **an air carrier must also prove that it deployed all its resources in terms of staff or equipment and the financial means at its disposal** in order to avoid the changing of a tyre damaged by a foreign object lying on the airport runway from leading to long delay of the flight in question. In that regard, specifically in respect of damage to tyres, the Court notes that air carriers are able to have at their disposal, in all airports from which they operate, contracts for changing tyres under which they are afforded priority treatment.

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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