



Press and Information

Court of Justice of the European Union

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Judgment in Case C-74/19
Transportes Aéreos Portugueses

The unruly behaviour of an air passenger may constitute an ‘extraordinary circumstance’ capable of exempting the carrier from its obligation to pay compensation for the cancellation or long delay of the flight concerned or of a subsequent flight operated by that carrier using the same aircraft

Nevertheless, the air carrier must, in respect of the reasonable measures that it must adopt in order to release itself from its obligation to pay compensation, ensure the re-routing of passengers as soon as possible, by means of other direct or indirect flights which may be operated by other air carriers

In the judgment in Transportes Aéreos Portugueses (C-74/19), delivered on 11 June 2020, the Court defined the concepts of ‘extraordinary circumstances’ and ‘reasonable measures’ within the meaning of Regulation No 261/2004 (‘the regulation on the rights of air passengers’).¹ Accordingly, it held that, under certain conditions, the unruly behaviour of a passenger which led to the re-routing of the aircraft, which caused the delay to the flight, constitutes an ‘extraordinary circumstance’, and that an operating air carrier may rely on that ‘extraordinary circumstance’ which affected not the cancelled or delayed flight but an earlier flight operated by that air carrier using the same aircraft. The Court also held that the re-routing of a passenger by the air carrier by means of the next flight operated by that air carrier and leading that passenger to arrive the day after the day initially envisaged constitutes a ‘reasonable measure’ releasing that carrier from its obligation to pay compensation only if certain conditions are met.

The dispute in the main proceedings is between a passenger and the air carrier Transportes Aéreos Portugueses (TAP) concerning its refusal to compensate that passenger whose connecting flight was subject to a long delay in arrival at its final destination. The air carrier had refused to allow the claim for compensation on the ground that the delay to the flight concerned was the result of the unruly behaviour of a passenger on a previous flight operated using the same aircraft, which led to the re-routing of the aircraft, and that that circumstance had to be classified as ‘extraordinary’ within the meaning of the regulation on the rights of air passengers,² which exempted it from its obligation to pay compensation under that regulation.³

The Tribunal Judicial da Comarca de Lisboa (District Court, Lisbon, Portugal), hearing the case, had doubts as to the legal classification of the circumstance giving rise to that delay, as to whether an air carrier may rely on such a circumstance when it affected the aircraft which made the flight concerned, but on the occasion of a flight prior to that flight, and as to the reasonableness of the measures implemented by that carrier.

In that regard, the Court noted that an air carrier is not obliged to compensate passengers if it can prove that the flight cancellation or delay of three hours or more is caused by ‘extraordinary circumstances’ which could not have been avoided even if all reasonable measures had been

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 Article 5(3) of Regulation No 261/2004

³ Article 5(1)(c) and Article 7(1) of Regulation No 261/2004

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.

In the first place, the Court noted that events may be classified as **'extraordinary circumstances'**, within the meaning of the regulation on the rights of air passengers, 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, both conditions being cumulative. Such circumstances **may, in particular, occur in the case of security risks.**

After pointing out that **the unruly behaviour of a passenger which has led to the re-routing of the aircraft in fact jeopardises the safety of the flight in question**, the Court held, first, that **the behaviour in question is not inherent in the normal exercise of the air carrier's activity.** Secondly, **such behaviour is not, in principle, under the control of the air carrier**, since, first, the behaviour of a passenger and his reactions to the crew's requests are not foreseeable, and, secondly, on board an aircraft, both the commander and the crew have only limited means of controlling such behaviour.

However, the Court stated that **the behaviour in question cannot be** regarded as beyond the actual control of the operating air carrier concerned, and therefore **classified as an 'extraordinary circumstance'**, **if it appears that the carrier contributed to the occurrence of the behaviour or was in a position to anticipate it and take appropriate measures at a time when it was able to do so without significant consequences for the operation of the flight concerned**, on the basis of warning signs of such behaviour. That may be the case in particular where the air carrier has taken on board a passenger already displaying behavioural problems before or even during boarding.

In the second place, the Court stated that **an air carrier must be able**, in order to be exempted from its obligation to compensate passengers in the event of a long delay or cancellation of a flight, **to rely on an 'extraordinary circumstance' affecting a previous flight operated by that carrier using the same aircraft, provided that there is a direct causal link between the occurrence of that circumstance which affected a previous flight and the delay or cancellation of a subsequent flight**, which it is for the national court to assess in the light of the facts available to it and taking into account, inter alia, the conditions of operation of the aircraft concerned.

In the third place, the Court considered that, **in the event of the occurrence of an 'extraordinary circumstance', the air carrier**, which seeks to be exempted from its obligation to compensate passengers, **must deploy all the resources at its disposal to ensure reasonable, satisfactory and timely re-routing, including seeking alternative direct or indirect flights which may be operated by other air carriers, whether or not belonging to the same airline alliance, and arriving at a scheduled time that is not as late as the next flight of the air carrier concerned.**

Consequently, **the air carrier cannot be regarded as having deployed all the resources at its disposal by merely offering to re-route the passenger concerned to his final destination on the next flight operated by that carrier and arriving at the destination on the day following the day initially scheduled for his arrival, unless there is no available seat on another direct or indirect flight enabling that passenger to reach his final destination at a scheduled time that is not as late as the next flight of the air carrier concerned or the implementation of such re-routing constitutes an intolerable sacrifice for that air carrier in the light of the capacities of its undertaking at the relevant time.**

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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