

**Parties to the main proceedings**

*Applicants:* Christopher Sturgeon, Gabriel Sturgeon, Alana Sturgeon (C-402/07), Stefan Böck, Cornelia Lepuschitz (C-432/07)

*Defendants:* Condor Flugdienst GmbH (C-402/07), Air France SA (C-432/07)

**Re:**

References for preliminary rulings — Bundesgerichtshof, Handelsgericht Wien — Interpretation of Articles 2(l) and 5(1)(c) of 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) — Flight which departed much later than the scheduled time of departure — Distinction between the concepts of ‘delay’ and ‘cancellation’

**Operative part of the judgment**

- Articles 2(l), 5 and 6 of 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, must be interpreted as meaning that a flight which is delayed, irrespective of the duration of the delay, even if it is long, cannot be regarded as cancelled where the flight is operated in accordance with the air carrier's original planning.
- Articles 5, 6 and 7 of Regulation No 261/2004 must be interpreted as meaning that passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled and they may thus rely on the right to compensation laid down in Article 7 of the regulation where they suffer, on account of a flight delay, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.
- Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that a technical problem in an aircraft which leads to the cancellation or delay of a flight is not covered by the concept of ‘extraordinary circumstances’ within the meaning of that provision, unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control.

<sup>(1)</sup> OJ C 283, 24.11.2007.

**Judgment of the Court (Second Chamber) of 19 November 2009 — Commission of the European Communities v Italian Republic**

(Case C-540/07) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — Free movement of capital — Article 56 EC — Articles 31 and 40 of the EEA Agreement — Direct taxation — Withholding at source on outgoing dividends — Set-off at the place of establishment of the recipient of the dividend, pursuant to a convention for the avoidance of double taxation)*

(2010/C 24/07)

*Language of the case: Italian*

**Parties**

*Applicant:* Commission of the European Communities (represented by: R. Lyal and A. Aresu, Agents)

*Defendant:* Italian Republic (represented by: R. Adam, Agent, P. Gentili, avvocato dello Stato)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Articles 56 EC and 40 EEA — Tax system more onerous, for dividends distributed to companies established in other Member States and in EEA States, than that applied to ‘domestic’ dividends

**Operative part of the judgment**

*The Court:*

- Declares that, by making dividends distributed to companies established in other Member States subject to a less favourable tax regime than that applied to dividends distributed to resident companies, the Italian Republic has failed to fulfil its obligations under Article 56(1) EC;
- Dismisses the action as to the remainder.
- Orders the Italian Republic to pay three quarters of the costs. The Commission of the European Communities is ordered to pay the remaining quarter.

<sup>(1)</sup> OJ C 37, 9.2.2008.