

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?
4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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(<sup>1</sup>) 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.

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**Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Thomas Kiehl v TUIfly GmbH**

(Case C-279/17)

(2017/C 239/45)

*Language of the case: German*

**Referring court**

Amtsgericht Hannover

**Parties to the main proceedings**

*Applicant:* Thomas Kiehl

*Defendant:* TUIfly GmbH

**Questions referred**

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? (<sup>1</sup>) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?
2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?
3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?
4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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(<sup>1</sup>) 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.