



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

26 June 2019*

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 5(3) — Compensation to passengers in the event of denied boarding and of cancellation or long delay of flights — Scope — Exemption from the obligation to pay compensation — Concept of ‘extraordinary circumstances’ — Presence of petrol on an airport runway)

In Case C-159/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the juge de paix du troisième canton de Charleroi the Magistrate’s Court for the Third Canton of Charleroi, Belgium), made by decision of 31 January 2018, received at the Court on 27 February 2018, in the proceedings

André Moens

v

Ryanair Ltd,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, K. Jürimäe, D. Šváby (Rapporteur), S. Rodin and N. Piçarra, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Moens, by N. Leys, advocaat,
- Ryanair Ltd, by C. Price, lawyer,
- the German Government, initially by T. Henze, M. Hellmann and A. Berg, and subsequently by M. Hellmann and A. Berg acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by J. Hottiaux and N. Yerrell, acting as Agents,

* Language of the case: French.

after hearing the Opinion of the Advocate General at the sitting on 19 December 2018,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 5(3) 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).
- 2 The request has been made in proceedings between Mr André Moens and Ryanair Ltd, an air carrier, concerning the latter's refusal to compensate that passenger for a long delay to his flight.

Legal context

European Union law

- 3 Recitals 14 and 15 in the preamble to Regulation No 261/2004 state:
 - '(14) As under the [Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention) (OJ 2001 L 194, p. 39)] obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.
 - (15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all measures had been taken by the air carrier concerned to avoid the delays or cancellations.'
- 4 Under the heading 'Cancellation', Article 5 of that regulation provides:
 - '1. In case of cancellation of a flight, the passengers concerned shall:
...
(c) have the right to compensation by the operating air carrier in accordance with Article 7 ...
 3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, 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.
...'
- 5 Article 7 of Regulation No 261/2004, headed 'Right to compensation', provides in paragraph (1):

'Where reference is made to this Article, passengers shall receive compensation amounting to:

 - (a) EUR 250 for all flights of 1 500 kilometres or less;

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 6 Mr Moens booked a flight from Treviso (Italy) to Charleroi (Belgium) with Ryanair.
- 7 That flight was carried out on 21 December 2015 with an arrival delay of 4 hours and 23 minutes, that delay originating from the presence of petrol on a runway at Treviso Airport, resulting in the closure of the runway for a period of more than 2 hours and, subsequently, the postponement of the take-off of the aircraft making the flight in question.
- 8 Due to that delay of more than 3 hours, Mr Moens asked Ryanair to pay the compensation of EUR 250 provided for in Article 5(1)(c) of Regulation No 261/2004, read in conjunction with Article 7(1)(a) thereof.
- 9 As Ryanair refused to grant that request on the ground that the long delay of the flight in question was due to an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation No 261/2004, Mr Moens brought an action before the juge de paix du troisième canton de Charleroi (the Magistrate's Court for the Third Canton of Charleroi, Belgium) in order to obtain the compensation sought.
- 10 That court is uncertain whether the presence of petrol on one of the runways of Treviso Airport causing such a delay could be classified as an 'extraordinary circumstance' within the meaning of that provision.
- 11 In those circumstances, the juge de paix du troisième canton de Charleroi (Magistrate's Court for the Third Canton of Charleroi) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:
- '(1) ... Does the circumstance at issue in the present proceedings, that is to say, the spillage of petrol on a runway which caused that runway to be closed, fall to be classified under the notion of an "event" within the meaning of paragraph 22 of the judgment of 22 December 2008, *Wallentin-Hermann* (C-549/07, EU:C:2008:771), or under that of "extraordinary circumstances" within the meaning of recital 14 of [Regulation No 261/2004], as interpreted by the judgment of 31 January 2013, *McDonagh* (C-12/11, EU:C:2013:43), or do those two concepts merge?
- (2) ... Must Article 5(3) of [Regulation No 261/2004] be interpreted as meaning that an event such as that at issue in the present proceedings, that is to say, the spillage of petrol on a runway which caused that runway to be closed, must be found to be an event inherent in the normal exercise of the activity of an air carrier and, accordingly, cannot be classified as an "extraordinary circumstance" capable of exonerating the air carrier from its obligation to compensate passengers in the case where a flight operated by that carrier is subjected to a significant delay?
- (3) If [an] event such as that at issue in the present proceedings, that is to say, the spillage of petrol on a runway which caused that runway to be closed, must be found to be an "extraordinary circumstance", must it be inferred from this that, for the air carrier, this is an "extraordinary circumstance" that could not have been avoided even if all reasonable measures had been taken?'

The questions

The first and second questions

- 12 As a preliminary point, it should be noted that it is not apparent from the information provided by the referring court that the petrol spilled onto the runway, which was the cause of the long delay to the flight at issue in the main proceedings, came from an aircraft of the carrier which operated that flight, namely Ryanair.
- 13 In those circumstances, it is appropriate to understand the first and second questions, which must be assessed jointly, to the effect that the referring court asks, in essence, whether Article 5(3) of Regulation No 261/2004, read in the light of recitals 14 and 15 thereof, must be interpreted as meaning that the presence of petrol on a runway which led to its closure and, consequently, the long delay of a flight to or from that airport, falls within the concept of ‘extraordinary circumstances’ within the meaning of that provision, where the petrol in question does not come from an aircraft of the carrier which operated the flight.
- 14 The EU legislature has laid down the obligations of air carriers in the event of the cancellation or long delay of a flight (that is, a delay equal to or in excess of 3 hours) in Article 5(1) of Regulation No 261/2004 (judgment of 4 May 2017, *Pešková and Peška*, C-315/15, EU:C:2017:342, paragraph 19 and the case-law cited).
- 15 By way of derogation from Article 5(1) of Regulation No 261/2004, recitals 14 and 15 and Article 5(3) of that regulation state that an air carrier is to be released from its obligation to pay passengers compensation under Article 7 of the regulation if the carrier can prove that the cancellation or delay equal to or in excess of 3 hours in arrival is caused by ‘extraordinary circumstances’ which could not have been avoided even if all reasonable measures had been taken or, 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 prevent that situation from resulting in the cancellation or long delay of the flight in question (judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 19 and the case-law cited).
- 16 According to settled case-law, events may be classified as ‘extraordinary circumstances’, within the meaning of Article 5(3) of Regulation No 261/2004, 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 (judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 20 and the case-law cited).
- 17 In that regard, it must be noted that the classification as ‘extraordinary circumstance’ within the meaning of that provision must be made solely in the light of the circumstances giving rise to the cancellation or long delay of the flight concerned, without it being necessary to assess, in advance and as the referring court seems to be minded to do, whether that fact constitutes an ‘event’ within the meaning of paragraph 22 of the judgment of 22 December 2008, *Wallentin-Hermann* (C-549/07, EU:C:2008:771).
- 18 With regard to the question as to whether the presence of petrol on a runway of an airport which led to its closure and, consequently, the long delay of a flight to or from that airport, falls within the concept of ‘extraordinary circumstances’ within the meaning of that provision, when the petrol in question does not originate from an aircraft of the carrier that operated that flight, it should be noted that, logically, such a circumstance cannot be regarded as intrinsically linked to the operation of the aircraft that made that flight (see, by analogy, judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 24).

- 19 Consequently, such a circumstance cannot be regarded as inherent, by its nature or origin, in the normal exercise of the activity of the air carrier concerned (see, by analogy, judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 26).
- 20 Furthermore, it is beyond the effective control of the air carrier concerned, given that the maintenance of the runways is in no way within its competence (see, to that effect, judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 26) and that the decision of the competent airport authorities to close runways at an airport is binding on air carriers.
- 21 Consequently, the presence of petrol on a runway which led to the closure of that runway and, as a consequence, a long flight delay, must be classified as ‘extraordinary circumstances’ within the meaning of Article 5(3) of Regulation No 261/2004.
- 22 In the light of the above considerations, the answer to the first and second questions is that Article 5(3) of Regulation No 261/2004, read in the light of recitals 14 and 15 thereof, must be interpreted as meaning that the presence of petrol on a runway involving the closure of that airport and, consequently, the significant delay of a flight to or from that airport is covered by the concept of ‘extraordinary circumstances’ within the meaning of that provision where the petrol in question does not come from an aircraft of the carrier which operated the flight.

The third question

- 23 By its third question, the referring court asks, in essence, whether Article 5(3) of Regulation No 261/2004, read in the light of recitals 14 and 15 thereof, must be interpreted as meaning that the presence of petrol on a runway of an airport which has led to the closure of that runway, the nature of which is established as an ‘extraordinary circumstance’, must be regarded as a circumstance which could not have been avoided even if all reasonable measures had been taken within the meaning of that provision.
- 24 In this regard, it should be recalled, as is apparent from paragraph 15 of this judgment, that an air carrier is to be released from its obligation to pay passengers compensation under Article 5(1)(c) and Article 7 of Regulation No 261/2004 if the carrier can prove that the cancellation or delay of 3 hours or more is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- 25 Thus, since not all extraordinary circumstances confer exemption, the onus is on the air carrier seeking to rely on them to establish that they could not, on any view, have been avoided by measures appropriate to the situation — that is to say, by measures which, at the time those extraordinary circumstances arise, meet, inter alia, conditions which are technically and economically viable for the air carrier concerned (judgment of 4 May 2017, *Pešková and Peška*, C-315/15, EU:C:2017:342, paragraph 28).
- 26 That air carrier must establish that, even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal, it would clearly not have been able, unless it had made intolerable sacrifices in the light of the capacities of its undertaking at the relevant time, to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight or its delay equal to or in excess of 3 hours in arrival (judgment of 4 May 2017, *Pešková and Peška*, C-315/15, EU:C:2017:342, paragraph 29).
- 27 Thus, the Court has established an individualised and flexible concept of ‘reasonable measures’, leaving to the national court the task of assessing whether, in the circumstances of the particular case, the air carrier could be regarded as having taken measures appropriate to the situation (judgment of 4 May 2017, *Pešková and Peška*, C-315/15, EU:C:2017:342, paragraph 30), while stating that only those

measures which can actually be its responsibility must be taken into account, excluding those which are the responsibility of other parties, such as, inter alia, airport managers or the competent air traffic controllers (judgment of 4 May 2017, *Pešková and Peška*, C-315/15, EU:C:2017:342, paragraph 43).

- 28 In the present case, as the Advocate General observes, in essence, in points 35 and 36 of his Opinion, faced with a decision of the airport authorities to close a runway of an airport, an air carrier is bound to comply with it and to await the decision of those authorities to reopen that runway or any alternative measure. Therefore, an air carrier, such as that at issue in the main proceedings, did not have the option of taking any reasonable measures to avoid the extraordinary circumstance in question.
- 29 It follows from the foregoing considerations that the answer to the third question is that Article 5(3) of Regulation No 261/2004, read in the light of recitals 14 and 15 thereof, must be interpreted as meaning that the presence of petrol on a runway of an airport which has led to the closure of that runway is to be regarded as a circumstance which could not have been avoided even if all reasonable measures had been taken within the meaning of that provision.

Costs

- 30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- 1. Article 5(3) 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, read in the light of recitals 14 and 15 thereof, must be interpreted as meaning that the presence of petrol on a runway of an airport which led to its closure and, consequently, the long delay of a flight to or from that airport, falls within the concept of ‘extraordinary circumstances’ within the meaning of that provision, when the petrol in question does not originate from an aircraft of the carrier that operated that flight.**
- 2. Article 5(3) of Regulation No 261/2004, read in the light of recitals 14 and 15 thereof, must be interpreted as meaning that the presence of petrol on a runway of an airport which has led to the closure of that runway, the nature of which is established as an ‘extraordinary circumstance’, must be regarded as a circumstance which could not have been avoided even if all reasonable measures had been taken within the meaning of that provision.**

Vilaras

Jürimäe

Šváby

Rodin

Piçarra

Delivered in open court in Luxembourg on 26 June 2019.

[Signatures]