

Parties to the main proceedings

Applicants: QE, RD

Defendant: SATA Internacional — Serviços de Transportes Aéreos SA

Other party: Ana — Aeroportos de Portugal SA

Questions referred

1. Must an event such as the one that occurred on 10 May 2017 at the Lisbon airport, when there was an extensive and significant interruption to the fuel supply making it impossible to refuel aircraft due to a malfunction in the pumping system that impeded the transfer of fuel to the plate system, which system is the responsibility of the airport infrastructure managing entities, and which malfunction impacted the continuous functioning and operability of that airport, resulting in delays and cancellations of 473 flights, of which 12 were diverted, 98 cancelled and 363 delayed, affecting more than 41 000 passengers, be classified as 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 ⁽¹⁾ exempting air carriers from the obligation to pay compensation?
2. Did an airline use all means and alternatives at its disposal in order to limit the delay to a flight when, as a result of not being able to refuel at Lisbon airport for the aforementioned reason, it decided to refuel at an alternative close-by airport (Porto), and when, as a result of the delay caused by the late departure from Lisbon airport and the refuelling at another airport, which meant that the crew members of that aircraft no longer had any flight duty time available which, under the applicable legal provisions, would have enabled them to complete the flight that had been delayed, it resorted to entering into an operational leasing agreement (ACMI) with another airline in order to complete that flight?

⁽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).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 18 October 2019 — Bundesrepublik Deutschland v SE

(Case C-768/19)

(2020/C 19/21)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: SE

Other party: The Representative of the Federal Interest at the Bundesverwaltungsgericht

Questions referred

1. In the case of an applicant for asylum who, before the point at which the age of majority is reached by his child, by way of whom a family existed in the country of origin and to whom subsidiary protection status was granted, following the attainment of majority, on the basis of an application for protection filed before the age of majority was reached ('the beneficiary of protection'), entered the host Member State of the beneficiary of protection and also made an application for international protection there ('the applicant for asylum'), and in the case of a national provision which, in relation to the granting of a right to be granted subsidiary protection, that right being derived from the beneficiary of subsidiary protection, makes reference to Article 2(j) of Directive 2011/95/EU, ⁽¹⁾ is the point in time at which the decision on the asylum application of the applicant for asylum is taken or an earlier point in time to be taken into account for the question as to whether the beneficiary of protection is a 'minor' within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU, such as the point in time at which
 - (a) the beneficiary of protection was granted subsidiary protection status,
 - (b) the applicant for asylum made his asylum application,
 - (c) the applicant for asylum entered the host Member State, or
 - (d) the beneficiary of protection made his asylum application?
2. In the event
 - (a) that the point in time at which the application is made is decisive:

Is the request for protection expressed in writing, verbally or in any other way and made known to the national authority responsible for the asylum application (request for asylum) or the formal application for international protection to be taken as the basis in this respect?
 - (b) that the point in time at which the applicant for asylum enters the territory or the point in time at which he makes the asylum application is decisive:

Is it also significant whether, at that point in time, the decision on the application for protection of the beneficiary of protection who was subsequently recognised as being a beneficiary of subsidiary protection had not yet been taken?
3.
 - (a) What requirements are to be imposed in the situation described in Question 1 in order for the applicant for asylum to be a 'family member' (Article 2(j) of Directive 2011/95/EU) who is present 'in the same Member State in relation to the application for international protection' in which the person who was granted international protection is present and by way of whom the family 'already' existed 'in the country of origin'? Does this require, in particular, that family life between the beneficiary of protection and the applicant for asylum within the meaning of Article 7 of the Charter has been resumed in the host Member State, or is the mere simultaneous presence of the beneficiary of protection and the applicant for asylum in the host Member State sufficient in this respect? Is a parent a family member even if, depending on the circumstances of the individual case, entry into the territory was not intended for the purpose of actually assuming responsibility within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU for a beneficiary of international protection who is still a minor and unmarried?
 - (b) If Question 3(a) is to be answered to the effect that family life between the beneficiary of protection and the applicant for asylum within the meaning of Article 7 of the Charter must have been resumed in the host Member State, is the point in time at which it resumed significant? In that regard, must account be taken, in particular, of whether family life was re-established within a certain period of time after the applicant for asylum entered the territory, or at the point in time at which the applicant for asylum makes the asylum application or at a point in time at which the beneficiary of protection was still a minor?
4. Does the status of an applicant for asylum as a family member within the meaning of the third indent of Article 2(j) of Directive 2011/95/EU end when the beneficiary of protection reaches the age of majority and the associated responsibility for a person who is a minor and unmarried ceases to exist? In the event that this is answered in the negative: Does this status as a family member (and the associated rights) continue to exist indefinitely beyond that point in time or does it cease to exist after a certain period of time (if so: what period of time?) or upon the occurrence of certain events (if so: which events?)?

⁽¹⁾ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).