



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

31 January 2013*

(Air transport — Regulation (EC) No 261/2004 — Notion of ‘extraordinary circumstances’ — Obligation to provide assistance to passengers in the event of cancellation of a flight due to ‘extraordinary circumstances’ — Volcanic eruption leading to the closure of air space — Eruption of the Icelandic volcano Eyjafjallajökull)

In Case C-12/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Dublin Metropolitan District Court (Ireland), made by decision of 10 November 2010, received at the Court on 10 January 2011, in the proceedings

Denise McDonagh

v

Ryanair Ltd,

THE COURT (Third Chamber),

composed of K. Lenaerts, acting as President of the Third Chamber, E. Juhász, G. Arestis, T. von Danwitz and D. Šváby (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 9 February 2012,

after considering the observations submitted on behalf of:

- Ms McDonagh, by J. Hennessy, Solicitor,
- Ryanair Ltd, by G. Berrisch, Rechtsanwalt, M. Hayden, Senior Counsel, and R. Aylward, Barrister-at-Law,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the French Government, by G. de Bergues and M. Perrot, acting as Agents,
- the Polish Government, by M. Szpunar, acting as Agent,

* Language of the case: English.

— the United Kingdom Government, by S. Ossowski, acting as Agent,
— the European Parliament, by L.G. Knudsen and A. Troupiotis, acting as Agents,
— the Council of the European Union, by E. Karlsson and A. De Elera, acting as Agents,
— the European Commission, by K. Simonsson and N. Yerrell, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 22 March 2012,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation and assessment of the validity of Articles 5(1)(b) and 9 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 Ms McDonagh and Ryanair Ltd ('Ryanair') regarding the airline company's refusal to give Ms McDonagh the care provided for in Article 5(1)(b) of Regulation No 261/2004 after the eruption of the Icelandic volcano Eyjafjallajökull had caused the cancellation of her flight and, more generally, closure of part of European airspace.

Legal context

International law

- 3 The Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, was signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38; 'the Montreal Convention').
- 4 The last paragraph of the preamble to the Montreal Convention states:

'Convinced that collective State action for further harmonisation and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests ...'
- 5 Article 29 of the Convention states:

'In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.'

European Union law

6 Recitals 1, 2, 14 and 15 in the preamble to Regulation No 261/2004 state:

- '(1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.

...

- (14) As under the Montreal Convention, 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 reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.'

7 Article 5 of Regulation No 261/2004, headed 'Cancellation', states:

'1. In case of cancellation of a flight, the passengers concerned shall:

- (a) be offered assistance by the operating air carrier in accordance with Article 8; and
- (b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:
 - (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or
 - (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
 - (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

...

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.

...'

8 Article 8 of Regulation No 261/2004 defines the manner in which assistance is provided by air carriers to passengers as regards their right to reimbursement or re-routing.

9 Article 9 of Regulation No 261/2004, headed 'Right to care', is worded as follows:

'1. Where reference is made to this Article, passengers shall be offered free of charge:

(a) meals and refreshments in a reasonable relation to the waiting time;

(b) hotel accommodation in cases

— where a stay of one or more nights becomes necessary, or

— where a stay additional to that intended by the passenger becomes necessary;

(c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

...'

10 Under the heading 'Further compensation', Article 12(1) of Regulation No 261/2004 provides that 'this Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.'

11 Article 16 of Regulation No 261/2004, headed 'Infringements', reads as follows:

'1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.

...

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.'

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

12 On 11 February 2010, Ms McDonagh booked a flight with Ryanair from Faro (Portugal) to Dublin (Ireland) scheduled for 17 April 2010, for EUR 98. On 20 March 2010, the Eyjafjallajökull volcano in Iceland began to erupt. On 14 April 2010, it entered an explosive phase, casting a cloud of volcanic ash into the skies over Europe. On 15 April 2010, the competent air traffic authorities closed the airspace over a number of Member States because of the risks to aircraft.

- 13 On 17 April 2010, Ms McDonagh's flight was cancelled following the closure of Irish airspace. Ryanair flights between continental Europe and Ireland resumed on 22 April 2010 and Ms McDonagh was not able to return to Dublin until 24 April 2010.
- 14 During the period between 17 and 24 April 2010, Ryanair did not provide Ms McDonagh with care in accordance with the detailed rules laid down in Article 9 of Regulation No 261/2004.
- 15 Ms McDonagh brought an action against Ryanair before the referring court for compensation in the amount of EUR 1 129.41, corresponding to the costs which she had incurred during that period on meals, refreshments, accommodation and transport.
- 16 Ryanair claims that the closure of part of European airspace following the eruption of the Eyjafjallajökull volcano does not constitute 'extraordinary circumstances' within the meaning of Regulation No 261/2004 but 'super extraordinary circumstances', releasing it not only from its obligation to pay compensation but also from its obligations to provide care under Articles 5 and 9 of that regulation.
- 17 In light of its doubts as to whether the obligation to provide that care may be subject to limitations in circumstances such as those at issue in the main proceedings and taking the view that the Court of Justice has not yet ruled on that matter, the Dublin Metropolitan District Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Do circumstances such as the closures of European airspace as a result of the eruption of the Eyjafjallajökull volcano in Iceland, which caused widespread and prolonged disruption to air travel, go beyond "extraordinary circumstances" within the meaning of Regulation No 261/2004?
- (2) If the answer to Question 1 is yes, is liability for the duty to provide care excluded under Articles 5 and 9 [of Regulation No 261/2004] in such circumstances?
- (3) If the answer to Question 2 is no, are Articles 5 and 9 [of Regulation No 261/2004] invalid in so far as they violate the principles of proportionality and non-discrimination, the principle of an "equitable balance of interests" enshrined in the Montreal Convention, and Articles 16 and 17 of the Charter of Fundamental Rights of the European Union ["the Charter"]?
- (4) Is the obligation in Articles 5 and 9 [of Regulation No 261/2004] to be interpreted as containing an implied limitation, such as a temporal and/or a monetary limit, to provide care in cases where cancellation is caused by "extraordinary circumstances"?
- (5) If the answer to Question 4 is no, are Articles 5 and 9 [of Regulation No 261/2004] invalid in so far as they violate the principles of proportionality and non-discrimination, the principle of an "equitable balance of interests" enshrined in the Montreal Convention, and Articles 16 and 17 of the [Charter]?

Consideration of the questions referred

Admissibility

- 18 The Council of the European Union claims, in essence, that the questions are inadmissible on the basis that they are not relevant to the dispute in the main proceedings, since, in the event of cancellation of a flight and regardless of the cause of that cancellation, air passengers cannot invoke before a national court failure of an air carrier to comply with its obligation, laid down in Articles 5(1)(b) and 9 of Regulation No 261/2004, to provide care in order to obtain compensation from that air carrier.

- 19 It is to be recalled that, under Article 5(1)(b) of Regulation No 261/2004, in the event of cancellation of a flight the passengers concerned are to be offered assistance by the air carrier, under the conditions laid down in that subparagraph, meeting the costs of meals, accommodation and communication as provided for in Article 9 of that regulation.
- 20 The Court has already had occasion to explain that, when an air carrier fails to fulfil its obligations under Article 9 of Regulation No 261/2004, an air passenger is justified in claiming a right to compensation on the basis of the factors set out in those provisions (see, to that effect, Case C-83/10 *Sousa Rodríguez and Others* [2011] ECR I-9469, paragraph 44) and that such a claim cannot be understood as seeking damages, by way of redress on an individual basis, for the harm resulting from the cancellation of the flight concerned in the conditions laid down, inter alia, in Article 22 of the Montreal Convention (see, to that effect, *Sousa Rodríguez and Others*, paragraph 38).
- 21 A claim such as that at issue in the main proceedings seeks to obtain, from the air carrier, equivalent compliance with its obligation to provide care arising from Articles 5(1)(b) and 9 of Regulation No 261/2004, an obligation which, it should be recalled, operates at an earlier stage than the system laid down by the Montreal Convention (see Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 32, and Joined Cases C-581/10 and C-629/10 *Nelson and Others* [2012] ECR, paragraph 57).
- 22 The fact, noted in this connection by the Council, that each Member State designates a body responsible for the enforcement of Regulation No 261/2004 which, where appropriate, takes the measures necessary to ensure that the rights of passengers are respected and which each passenger may complain to about an alleged infringement of that regulation, in accordance with Article 16 of the regulation, is not such as to affect the right of a passenger to such reimbursement.
- 23 Article 16 cannot be interpreted as allowing only national bodies responsible for the enforcement of Regulation No 261/2004 to sanction the failure of air carriers to comply with their obligation laid down in Articles 5(1)(b) and 9 of that regulation to provide care.
- 24 Consequently, it must be held that an air passenger may invoke before a national court the failure of an air carrier to comply with its obligation, laid down in Articles 5(1)(b) and 9 of Regulation No 261/2004, to provide care in order to obtain compensation from that air carrier for the costs which it should have borne under those provisions.
- 25 Since the questions are relevant to the outcome of the dispute, the request for a preliminary ruling is therefore admissible.

Substance

The first question

- 26 By its first question the referring court asks, in essence, whether Article 5 of Regulation No 261/2004 must be interpreted as meaning that circumstances such as the closure of part of European airspace as a result of the eruption of the Eyjafjallajökull volcano constitute ‘extraordinary circumstances’ within the meaning of that regulation which do not release air carriers from their obligation laid down in Articles 5(1)(b) and 9 of the regulation to provide care or, on the contrary and because of their particular scale, go beyond the scope of that notion, thus releasing air carriers from that obligation.
- 27 At the outset, it should be noted that the term ‘extraordinary circumstances’ is not defined in Article 2 of Regulation No 261/2004 or in the other provisions of that regulation, even though a non-exhaustive list of those circumstances can be derived from recitals 14 and 15 in the preamble to the regulation.

- 28 It is settled case-law that the meaning and scope of terms for which European Union law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (*Wallentin-Hermann*, paragraph 17).
- 29 In accordance with everyday language, the words ‘extraordinary circumstances’ literally refer to circumstances which are ‘out of the ordinary’. In the context of air transport, they refer to an event which is not inherent in the normal exercise of the activity of the carrier concerned and is beyond the actual control of that carrier on account of its nature or origin (*Wallentin-Hermann*, paragraph 23). In other words, as the Advocate General noted in point 34 of his Opinion, they relate to all circumstances which are beyond the control of the air carrier, whatever the nature of those circumstances or their gravity.
- 30 Regulation No 261/2004 contains nothing that would allow the conclusion to be drawn that it recognises a separate category of ‘particularly extraordinary’ events, beyond ‘extraordinary circumstances’ referred to in Article 5(3) of that regulation, which would lead to the air carrier being exempted from all its obligations, including those under Article 9 of the regulation.
- 31 Next, as for the context of and the aims pursued by Article 5 of Regulation No 261/2004, which prescribes the obligations of an air carrier in the event of cancellation of a flight, it must be noted, first, that when exceptional circumstances arise, Article 5(3) exempts the air carrier only from its obligation to pay compensation under Article 7 of that regulation. The European Union legislature thus took the view that the obligation on the air carrier to provide care under Article 9 of that regulation is necessary whatever the event which has given rise to the cancellation of the flight. Second, it is clear from recitals 1 and 2 of Regulation No 261/2004 that the regulation aims at ensuring a high level of protection for passengers and takes account of the requirements of consumer protection in general, inasmuch as cancellation of flights causes serious inconvenience to passengers (*Wallentin-Hermann*, paragraph 18, and *Nelson and Others*, paragraph 72).
- 32 If circumstances such as those at issue in the main proceedings went beyond the scope of ‘extraordinary circumstances’ within the meaning of Regulation No 261/2004 due in particular to their origin and scale, such an interpretation would go against not only the meaning of that notion in everyday language but also the objectives of that regulation.
- 33 Such an interpretation would in fact mean that air carriers would be required to provide care pursuant to Article 9 of Regulation No 261/2004 to air passengers who find themselves, due to cancellation of a flight, in a situation causing limited inconvenience, whereas passengers, such as the plaintiff in the main proceedings, who find themselves in a particularly vulnerable state in that they are forced to remain at an airport for several days would be denied that care.
- 34 In the light of the foregoing, the answer to the first question is that Article 5 of Regulation No 261/2004 must be interpreted as meaning that circumstances such as the closure of part of European airspace as a result of the eruption of the Eyjafjallajökull volcano constitute ‘extraordinary circumstances’ within the meaning of that regulation which do not release air carriers from their obligation laid down in Articles 5(1)(b) and 9 of the regulation to provide care.
- 35 It follows from the answer given to the first question that there is no need to answer the second and third questions.

The fourth and fifth questions

- 36 By its fourth and fifth questions, which should be examined together, the referring court asks, in essence, whether Articles 5(1)(b) and 9 of Regulation No 261/2004 must be interpreted as meaning that, in the event of cancellation of a flight due to ‘extraordinary circumstances’ such as those at issue in the main proceedings, the obligation to provide care to passengers laid down in those provisions is limited in temporal or monetary terms and, if not, whether those provisions thus interpreted are invalid in the light of the principles of proportionality and non-discrimination, the principle of an ‘equitable balance of interests’ referred to in the Montreal Convention or Articles 16 and 17 of the Charter.
- 37 It should be noted that, in the case of cancellation of a flight on account of ‘extraordinary circumstances’, the European Union legislature sought to modify the obligations of air carriers laid down in Article 5(1) of Regulation No 261/2004.
- 38 Under recital 15 and Article 5(3) of Regulation No 261/2004, by way of derogation from the provisions of Article 5(1), the air carrier is thus exempted from its obligation to compensate passengers under Article 7 of that regulation 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, namely circumstances which are beyond the air carrier’s actual control (*Nelson and Others*, paragraph 39).
- 39 In that regard, the Court has held that, in such circumstances, the air carrier is only released from its obligation to provide compensation under Article 7 of Regulation No 261/2004 and that, consequently, its obligation to provide care in accordance with Article 9 of that regulation remains (see, to that effect, Case C-294/10 *Eglitis and Ratnieks* [2011] ECR I-3983, paragraphs 23 and 24).
- 40 Furthermore, no limitation, whether temporal or monetary, of the obligation to provide care to passengers in extraordinary circumstances such as those at issue in the main proceedings is apparent from the wording of Regulation No 261/2004.
- 41 It follows from Article 9 of Regulation No 261/2004 that all the obligations to provide care to passengers whose flight is cancelled are imposed, in their entirety, on the air carrier for the whole period during which the passengers concerned must await their re-routing. To that effect, it is clear from Article 9(1)(b) that hotel accommodation is to be offered free of charge by the air carrier during the ‘necessary’ period.
- 42 Moreover, any interpretation seeking the recognition of limits, whether temporal or monetary, on the obligation of the air carrier to provide care to passengers whose flight has been cancelled would have the effect of jeopardising the aims pursued by Regulation No 261/2004 recalled in paragraph 31 of this judgment, in that, beyond the limitation adopted, passengers would be deprived of all care and thus left to themselves. As the Advocate General noted in point 52 of his Opinion, the provision of care to such passengers is particularly important in the case of extraordinary circumstances which persist over a long time and it is precisely in situations where the waiting period occasioned by the cancellation of a flight is particularly lengthy that it is necessary to ensure that an air passenger whose flight has been cancelled can have access to essential goods and services throughout that period.
- 43 Consequently, and contrary to what Ryanair claims, it cannot be deduced from Regulation No 261/2004 that, in circumstances such as those at issue in the main proceedings, the obligation referred to in Articles 5 and 9 of that regulation to provide care to passengers must be subject to a temporal or monetary limitation.

- 44 However, it is necessary to ensure that the interpretation in the preceding paragraph does not conflict with the principles of proportionality, of an 'equitable balance of interests' referred to in the Montreal Convention and of non-discrimination, or with Articles 16 and 17 of the Charter. Under a general principle of interpretation, a European Union measure must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole (Case C-149/10 *Chatzi* [2010] ECR I-8489, paragraph 43).
- 45 As regards, first, the principle of proportionality, it must be noted that the Court has already had occasion to find, in Case C-344/04 *IATA and ELFAA* [2010] ECR I-403, paragraphs 78 to 92, that Articles 5 to 7 of Regulation No 261/2004 are not invalid by reason of infringement of the principle of proportionality.
- 46 There is nothing to justify, even on the basis of the lack of a temporal or monetary limit on the obligation to provide care in circumstances such as those at issue in the main proceedings, the finding of validity made by the Court in that case being called into question.
- 47 The fact that the obligation defined in Article 9 of Regulation No 261/2004 to provide care entails, as Ryanair claims, undoubted financial consequences for air carriers is not such as to invalidate that finding, since those consequences cannot be considered disproportionate to the aim of ensuring a high level of protection for passengers.
- 48 The importance of the objective of consumer protection, which includes the protection of air passengers, may justify even substantial negative economic consequences for certain economic operators (*Nelson and Others*, paragraph 81 and the case-law cited).
- 49 In addition, as the Advocate General noted in points 58 and 60 of his Opinion, air carriers should, as experienced operators, foresee costs linked to the fulfilment, where relevant, of their obligation to provide care and, furthermore, may pass on the costs incurred as a result of that obligation to airline ticket prices.
- 50 It follows that Articles 5(1)(b) and 9 of Regulation No 261/2004 are not contrary to the principle of proportionality.
- 51 None the less, an air passenger may only obtain, by way of compensation for the failure of the air carrier to comply with its obligation referred to in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care, reimbursement of the amounts which, in the light of the specific circumstances of each case, proved necessary, appropriate and reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger, a matter which is for the national court to assess.
- 52 As regards, second, the principle of an 'equitable balance of interests' referred to in the last paragraph of the preamble to the Montreal Convention, suffice it to note that the standardised and immediate compensatory measures laid down by Regulation No 261/2004, which include the obligation to provide care to passengers whose flight has been cancelled, are not among those whose institution is governed by the Montreal Convention (see, to that effect, *Wallentin-Hermann*, paragraph 32 and the case-law cited).
- 53 Therefore, there is no need to assess the validity of the aforesaid provisions in the light of the principle of an 'equitable balance of interests' referred to in that Convention.
- 54 As regards, third, the general principle of non-discrimination or equal treatment, Ryanair claims that the obligation laid down in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care in a situation such as that at issue in the main proceedings imposes obligations on air carriers which, in circumstances similar to those at issue in the main proceedings, do not fall upon other modes of transport governed by Regulation (EC) No 1371/2007 of the European Parliament and of the Council

of 23 October 2007 on rail passengers' rights and obligations (OJ 2007 L 315, p. 14), Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ 2010 L 334, p. 1) and Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ 2011 L 55, p. 1), even though passengers stranded by widespread and prolonged disruption of transport find themselves in an identical situation whatever their mode of transport.

- 55 In that respect, it should be noted that the Court has already held in *IATA and ELFAA*, paragraphs 93 to 99, that Articles 5 to 7 of Regulation No 261/2004 do not infringe the principle of equal treatment.
- 56 The situation of undertakings operating in the different transport sectors is not comparable since the different modes of transport, having regard to the manner in which they operate, the conditions governing their accessibility and the distribution of their networks, are not interchangeable as regards the conditions of their use (*IATA and ELFAA*, paragraph 96).
- 57 In those circumstances, the European Union legislature was able to establish rules providing for a level of customer protection that varied according to the transport sector concerned.
- 58 It follows that Articles 5(1)(b) and 9 of Regulation No 261/2004 do not infringe the principle of non-discrimination.
- 59 As regards, fourth, Articles 16 and 17 of the Charter, guaranteeing freedom to conduct a business and the right to property respectively, Ryanair claims that the obligation to provide care to passengers imposed on air carriers in circumstances such as those at issue in the main proceedings has the effect of depriving air carriers of part of the fruits of their labour and of their investments.
- 60 In that regard, it must be noted, first, that freedom to conduct a business and the right to property are not absolute rights but must be considered in relation to their social function (see, to that effect, Case C-544/10 *Deutsches Weintor* [2012] ECR, paragraph 54 and the case-law cited).
- 61 Next, Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights enshrined by it as long as the limitations are provided for by law, respect the essence of those rights and freedoms, and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.
- 62 Lastly, when several rights protected by the European Union legal order clash, such an assessment must be carried out in accordance with the need to reconcile the requirements of the protection of those various rights and striking a fair balance between them (see, to that effect, Case C-275/06 *Promusicae* [2008] ECR I-271, paragraphs 65 and 66, and *Deutsches Weintor*, paragraph 47).
- 63 In this case, the referring court mentions Articles 16 and 17 of the Charter. However, it is also necessary to take account of Article 38 thereof which, like Article 169 TFEU, seeks to ensure a high level of protection for consumers, including air passengers, in European Union policies. As has been noted in paragraph 31 of this judgment, protection of those passengers is among the principal aims of Regulation No 261/2004.
- 64 It follows from paragraphs 45 to 49 of this judgment relating to the principle of proportionality that Articles 5(1)(b) and 9 of Regulation No 261/2004, as interpreted in paragraph 43 of this judgment, must be considered to comply with the requirement intended to reconcile the various fundamental rights involved and strike a fair balance between them.

65 Therefore, those provisions do not breach Articles 16 and 17 of the Charter.

66 Consequently, the answer to the fourth and fifth questions is that Articles 5(1)(b) and 9 of Regulation No 261/2004 must be interpreted as meaning that, in the event of cancellation of a flight due to ‘extraordinary circumstances’ of a duration such as that in the main proceedings, the obligation to provide care to air passengers laid down in those provisions must be complied with, and the validity of those provisions is not affected.

However, an air passenger may only obtain, by way of compensation for the failure of the air carrier to comply with its obligation referred to in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care, reimbursement of the amounts which, in the light of the specific circumstances of each case, proved necessary, appropriate and reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger, a matter which is for the national court to assess.

Costs

67 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

1. **Article 5 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 circumstances such as the closure of part of European airspace as a result of the eruption of the Eyjafjallajökull volcano constitute ‘extraordinary circumstances’ within the meaning of that regulation which do not release air carriers from their obligation laid down in Articles 5(1)(b) and 9 of the regulation to provide care.**
2. **Articles 5(1)(b) and 9 of Regulation No 261/2004 must be interpreted as meaning that, in the event of cancellation of a flight due to ‘extraordinary circumstances’ of a duration such as that in the main proceedings, the obligation to provide care to air passengers laid down in those provisions must be complied with, and the validity of those provisions is not affected.**

However, an air passenger may only obtain, by way of compensation for the failure of the air carrier to comply with its obligation referred to in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care, reimbursement of the amounts which, in the light of the specific circumstances of each case, proved necessary, appropriate and reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger, a matter which is for the national court to assess.

[Signatures]