



## **Even in the event of a flight cancellation on account of unforeseen technical problems, air carriers are required to compensate passengers**

*However, certain technical problems resulting, in particular, from hidden manufacturing defects affecting the safety of flights or acts of sabotage or terrorism may exempt air carriers from their obligation to pay compensation*

In case of cancellation of a flight, air carriers are required, under EU law,<sup>1</sup> to provide adequate care for the passengers concerned and to pay compensation (between €250 and €600, depending on the distance). However, a carrier is not obliged to pay that compensation 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.

Ms van der Lans had an air ticket reservation on a flight operated by KLM from Quito (Ecuador) to Amsterdam (Netherlands). The aircraft arrived in Amsterdam with a delay of 29 hours. According to KLM, the delay was due to extraordinary circumstances, specifically, a combination of defects: two components were defective, the fuel pump and a hydromechanical unit. These components were unavailable and had to be transported by air from Amsterdam in order to be installed in the aircraft concerned. KLM also observed that the defective components had not exceeded their average lifetime and that their manufacturer had not provided any specific indications as to which defects might arise if those components reached a certain age.

Ms van der Lans brought an action before the Rechtbank Amsterdam (District Court, Amsterdam) which decided to refer questions to the Court of Justice for a preliminary ruling. Essentially it wishes to know whether a technical problem which occurred unexpectedly, which is not attributable to defective maintenance and which was not detected during regular tests, falls within the definition of 'extraordinary circumstances', thereby exempting the carrier from his obligation to pay compensation.

In today's judgment, the Court recalls, first of all, that it follows from its case-law that technical problems may in fact constitute extraordinary circumstances. However, the circumstances surrounding the occurrence of those problems may be classified as 'extraordinary' only if they relate to an event which is not inherent in the normal exercise of the activity of the air carrier concerned and is beyond the actual control of that carrier on account of its nature or origin.<sup>2</sup> The Court states that that is the case, in particular, where it is revealed by the manufacturer of the aircraft comprising the fleet of the air carrier concerned, or by a competent authority, that those aircraft, although already in service, are affected by a hidden manufacturing defect which impinges on flight safety. The same would hold for damage to aircraft caused by acts of sabotage or terrorism.

However, since the functioning of aircraft inevitably gives rise to technical problems, air carriers are confronted as a matter of course in the exercise of their activity with such problems. In that connection, technical problems which come to light during maintenance of aircraft or on account of

<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).

<sup>2</sup> Case: [C-549/07](#) Wallentin-Hermann Press Release No [100/08](#)

failure to carry out such maintenance cannot constitute, in themselves, 'extraordinary circumstances'.

Next, the Court observes it is true that a breakdown caused by the premature malfunction of certain components of an aircraft, constitutes an unexpected event. Nevertheless, such a breakdown remains intrinsically linked to the very complex operating system of the aircraft, which is operated by the air carrier in conditions, particularly meteorological conditions, which are often difficult or even extreme, it being understood moreover that no component of an aircraft lasts forever.

Therefore, in the course of the activities of an air carrier, that unexpected event is inherent in the normal exercise of an air carrier's activity, as air carriers are confronted as a matter of course with unexpected technical problems. Furthermore, the prevention of such a breakdown or the repairs occasioned by it, including the replacement of a prematurely defective component, is not beyond the actual control of that carrier, since the latter is required to ensure the maintenance and proper functioning of the aircraft it operates for the purposes of its business.

Therefore, a technical problem cannot fall within the definition of 'extraordinary circumstances'.

In that connection, the Court also points out that the discharge of obligations pursuant to EU law is without prejudice to air carriers' rights to seek compensation from any person who caused the delay, such as the manufacturer of certain defective components.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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