

Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

12 March 2020 (*)

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Articles 5 and 7 — Right to compensation in the event of delay or cancellation of a flight — Entitlement to compensation more than once in the event of a delay or cancellation not only of the original reservation, but also of the subsequent reservation made in the context of a re-routing — Scope — Exemption from the obligation to pay compensation — Concept of ‘extraordinary circumstances’ — ‘On condition’ part — Technical shortcomings inherent in aircraft maintenance)

In Case C-832/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland), made by decision of 20 December 2018, received at the Court on 21 December 2018, in the proceedings

A and Others

v

Finnair Oyj,

THE COURT (Eighth Chamber),

composed of L.S. Rossi, President of the Chamber, J. Malenovský (Rapporteur) and F. Biltgen, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- Finnair Oyj, by T. Väättäinen, asianajaja,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the German Government, by J. Möller, M. Hellmann and by A. Berg, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Natale, avvocato dello Stato,
- the Austrian Government, initially by J. Schmoll and G. Hesse, and subsequently by J. Schmoll, acting as Agents,
- the European Commission, by N. Yerrell and I. Koskinen, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 5 and Article 7 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 eight air passengers and the airline Finnair Oyj concerning a claim for compensation following the delay of a re-routing flight proposed by the latter.

Legal context

- 3 According to recitals 1 and 2 and 12 to 15 of Regulation No 261/2004:
 - ‘(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.
 - ...
 - (12) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
 - (13) Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
 - (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 which 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 Article 2(1) of that regulation provides:

‘For the purposes of this Regulation:

...

 - (1) “cancellation” means the non-operation of a flight which was previously planned and on which at least one place was reserved.’

5 Article 3(1) and (2) of that regulation state:

- ‘1. This regulation shall apply:
 - (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
 - (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.
2. Paragraph 1 shall apply on the condition that passengers:
 - (a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,
 - as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,or, if no time is indicated,
 - not later than 45 minutes before the published departure time; or
 - (b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.’

6 Article 5 of Regulation No 261/2004, entitled ‘Cancellation’, provides:

- ‘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.
2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

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.

4. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.'

7 Pursuant to Article 7 of that regulation, entitled 'Right to compensation':

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

- (a) EUR 250 for all flights of 1500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).'

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

- (a) by two hours, in respect of all flights of 1500 kilometres or less; or
- (b) by three hours, in respect of all intra-Community flights of more than 1500 kilometres and for all other flights between 1500 and 3500 kilometres; or
- (c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50%.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.'

8 Article 8(1) of that regulation states as follows:

'Where reference is made to this Article, passengers shall be offered the choice between:

- (a) – reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,
 - a return flight to the first point of departure, at the earliest opportunity;
- (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or
- (c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.'

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

- 9 The applicants in the case before the referring court booked a direct flight from Helsinki (Finland) to Singapore with Finnair.
- 10 That flight was scheduled to depart on 11 October 2013 at 23:55. However, it was cancelled due to a technical defect that appeared in the aircraft.
- 11 After accepting Finnair's offer, the applicants in the main proceedings were re-routed on the Helsinki-Singapore connecting flight via Chongqing, China, with a scheduled departure the next day, 12 October 2013, at 5.40 p.m., with an expected arrival in Singapore on 13 October at 5.25 p.m.
- 12 Finnair was the operating carrier for the Helsinki-Chongqing-Singapore re-routing flight.
- 13 However, due to the failure of a rudder steering servo on the aircraft in question, their re-routing was delayed. They therefore arrived in Singapore at 12.15 a.m. on 14 October 2013.
- 14 The applicants in the main proceedings brought an action against Finnair before the Helsingin käräjäoikeus (District Court, Helsinki, Finland) seeking to have the airline ordered to pay them the sum of EUR 600 each, together with interest, on account of the cancellation of the original Helsinki-Singapore flight. In addition, they requested that Finnair should also be ordered to pay them the sum of EUR 600 each, together with interest, on account of the delay of more than three hours in the arrival of the Helsinki-Chongqing-Singapore re-routing flight.
- 15 Finnair awarded compensation of EUR 600 to each of the applicants in the main proceedings in respect of the cancellation of the original Helsinki-Singapore flight. However, the company refused to grant their second compensation claim. Finnair considered that that claim was unfounded, on the ground that Regulation No 261/2004 does not impose an obligation on the air carrier to pay compensation to a passenger whose flight has been cancelled in the event of delay in the re-routing flight subsequently offered to him. In addition, Finnair relied on the fact that the re-routing flight which was accepted by the applicants in the main proceedings had been delayed due to extraordinary circumstances within the meaning of Article 5(3) of that regulation.
- 16 By judgment of 21 June 2017, the Helsingin käräjäoikeus (District Court, Helsinki) dismissed the claims for compensation submitted by the applicants in the main proceedings in respect of the delay in the re-routing flight, holding that Regulation No 261/2004 did not give rise to an entitlement to compensation in that regard. Consequently, that court did not comment on whether the technical defect that had caused the delay of the re-routing flight constituted an extraordinary circumstance within the meaning of Article 5(3) of that regulation.
- 17 The applicants in the main proceedings appealed against that judgment to the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland) and requested that Finnair be ordered to compensate them in the amount of EUR 600 each, plus interest, on account of the delay in the Helsinki-Chongqing-Singapore re-routing flight.
- 18 Finnair sought to have the action dismissed on the ground, first, that the applicants in the main proceedings were not entitled to a second compensation under Regulation No 261/2004 and, second, that the re-routing flight had been delayed because of 'extraordinary circumstances' within the meaning of that regulation. It contends that one of the three rudder steering servos used to control the aircraft on this flight had failed, stating in this regard that this aircraft was an Airbus A330, regarding which the manufacturer had announced (Technical Follow-up) that several aircraft of this type had a hidden manufacturing or planning defect that affected the rudder steering servos. In addition, the rudder steering servo is a so-called 'on condition' part, which is only replaced by a new part when it becomes defective.

- 19 In those circumstances, the Helsingin hovioikeus (Helsinki Court of Appeal), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is Regulation No 261/2004 to be interpreted as meaning that a passenger has the right to further compensation in accordance with Article 7(1) of that regulation if he has received compensation for a cancelled flight, the operating air carrier of the re-routing flight is the same as that of the cancelled flight, and the re-routing flight after the cancelled flight is also delayed beyond the scheduled time of arrival to such an extent that it entitles the passenger to compensation?
- (2) If so, can the operating air carrier rely on extraordinary circumstances within the meaning of Article 5(3) if, following a technical follow-up by the aircraft manufacturer in relation to aircraft already in use, the part dealt with in that document is in fact treated as a so-called ‘on condition’ part, that is to say as a part that is used until it becomes defective, and the operating air carrier has prepared to replace the part in question by permanently stocking a spare part?’

Consideration of the questions referred

The first question

- 20 By its first question, the referring court asks, in essence, whether Regulation No 261/2004, and in particular Article 7(1) thereof, must be interpreted as meaning that an air passenger who has received compensation for the cancellation of a flight and has accepted the re-routing flight offered to him is entitled to compensation for the delay of the re-routing flight, where that delay is such as to give rise to entitlement to compensation and the air carrier of the re-routing flight is the same as that of the cancelled flight.
- 21 In that regard, it should be recalled that, pursuant to Article 5(1)(a) of Regulation No 261/2004, read in conjunction with Article 8(1) of that regulation, in the event of cancellation of a flight, the passengers concerned are offered three different forms of assistance by the operating air carrier, namely either reimbursement of the ticket and, where appropriate, a return flight to the first point of departure, or re-routing to their final destination at the earliest opportunity, or such re-routing at a later date at their convenience, subject to availability of seats.
- 22 In the main proceedings, following the cancellation of the flight booked by the passengers in question, Finnair paid them compensation under Article 7 of Regulation No 261/2004 and offered them re-routing, under Article 8(1) of that regulation, which they accepted. Due to a technical failure of the aircraft on the re-routing flight, however, they arrived at their final destination with a delay of more than six hours after the arrival time specified in the offer they had accepted.
- 23 The Court ruled that passengers whose flights have been delayed must be regarded as having a right to compensation under Article 5(1)(c) of Regulation No 261/2004, read in conjunction with Article 7(1) thereof, when they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier (see, to that effect, judgments of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraph 61, and of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 38).
- 24 In a case such as that in the main proceedings, the question therefore arises whether the right to compensation enjoyed by passengers on delayed flights, referred to in the previous paragraph, can also be relied on by passengers who, following the cancellation of their flight, for which they have received compensation, have accepted a re-routing flight offered by the air carrier, pursuant to Article 8(1) of Regulation 261/2004, and have reached their final destination three hours or more after the arrival time scheduled by the air carrier for that re-routing flight.

- 25 In that regard, it should be noted that Article 3 of Regulation No 261/2004, which determines the scope of that regulation, states, in paragraph 2 thereof, that that regulation applies provided that passengers have a confirmed reservation on the flight concerned or have been transferred by the air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.
- 26 It follows from that provision that Regulation No 261/2004 applies in particular to a situation in which an air passenger has been transferred by the air carrier, following the cancellation of his booked flight, on a re-routing flight to his final destination.
- 27 It must be noted that Regulation No 261/2004 does not contain any provision intended to limit the rights of passengers who find themselves in a situation of re-routing, such as that at issue in the main proceedings, including a possible limitation of their right to compensation.
- 28 It follows that, under the case-law cited in paragraph 23 of the present judgment, an air passenger who, having accepted the re-routing flight offered by the air carrier following the cancellation of his flight, reaches his final destination three hours or more after the arrival time originally scheduled by that air carrier for the re-routing flight, is entitled to compensation.
- 29 That interpretation is supported, in particular, by two other considerations.
- 30 On the one hand, it is apparent from recital 2 of Regulation No 261/2004 that the purpose of that regulation is to address the serious trouble and inconvenience caused by denied boarding, cancellation or long delay of flights.
- 31 Passengers who have been exposed to cancellations or long delays, such as those at issue in the main proceedings, have suffered that inconvenience, both in relation to the cancellation of their initially booked flight and subsequently as a result of the long delay of their re-routing flight. Therefore, it is in line with the objective of addressing that serious inconvenience to grant those passengers a right to compensation for each of those successive inconveniences.
- 32 On the other hand, in such a situation, if the air carrier were not subject to the obligation to compensate the passengers concerned, under the conditions laid down, failure to comply with its obligation to provide assistance imposed under Article 8(1) of Regulation No 261/2004 would be of no consequence. In so far as the obligation to compensate undoubtedly has incentive effects on that carrier as regards the effective implementation of such assistance, the absence of such consequences would have the effect that respect for the right to re-routing of passengers would be undermined, which would be contrary to the objective of ensuring a high level of protection set out in recital 1 of that Regulation.
- 33 In the light of the above considerations, the answer to the first question is that Regulation No 261/2004, and in particular Article 7(1) thereof, must be interpreted as meaning that an air passenger, who has received compensation for the cancellation of a flight and has accepted the re-routing flight offered to him, is entitled to compensation for the delay of the re-routing flight where that delay is such as to give rise to entitlement to compensation and the air carrier of the re-routing flight is the same as that of the cancelled flight.

The second question

- 34 By its second question, the referring court asks, in essence, whether Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that an air carrier may rely, in order to be released from its obligation to pay compensation, on ‘extraordinary circumstances’, within the meaning of that provision, arising from the failure of a so-called ‘on condition’ part, that is to say, a part which is only replaced by a new part when it becomes defective, provided that it permanently stocks a spare part.
- 35 At the outset, it should be noted that, as recalled in paragraph 11 of the Court’s recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2018 C 257,

p. 1) although, in order to deliver its decision, the Court necessarily takes into account the legal and factual context of the dispute in the main proceedings, as defined by the referring court or tribunal in its request for a preliminary ruling, it does not itself apply EU law to that dispute. When ruling on the interpretation or validity of EU law, the Court makes every effort to give a reply which will be of assistance in resolving the dispute in the main proceedings, but it is for the referring court or tribunal to draw concrete conclusions.

- 36 It is in the light of those recommendations that the Court will endeavour to provide the referring court with the information necessary to resolve the dispute before it.
- 37 In that regard, it should be recalled that, according to Article 5(3) of Regulation No 261/2004, read in the light of recitals 14 and 15 thereof, by way of derogation from Article 5(1) of that regulation, 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 of three hours or more 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 26 June 2019, *Moens*, C-159/18, EU:C:2019:535, paragraph 15 and the case-law cited).
- 38 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 (judgments of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 20 and of 26 June 2019, *Moens*, C-159/18, EU:C:2019:535, paragraph 16).
- 39 However, technical shortcomings inherent in aircraft maintenance cannot, in principle, constitute, as such, ‘extraordinary circumstances’ within the meaning of Article 5(3) of that Regulation (see, to that effect, judgment of 22 December 2008, *Wallentin-Herman*, C-549/07, EU:C:2008:771, paragraph 25).
- 40 The Court held that air carriers are regularly faced with such malfunctioning in the light of the specific conditions in which carriage by air takes place and the degree of technological sophistication of aircraft (judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 22 and the case-law cited).
- 41 More specifically, the premature, even unexpected, failure of certain parts of an aircraft does not constitute extraordinary circumstances, since such a breakdown is, in principle, intrinsically linked to the operating system of the aircraft (see, to that effect, judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 21 and the case-law cited).
- 42 It appears that the failure of a so-called ‘on condition’ part, such as that at issue in the main proceedings, which the air carrier has prepared to replace by permanently stocking a spare part, constitutes, in accordance with the case-law of the Court recalled in paragraph 38 of the present judgment, an event which, by its nature or origin, is inherent in the normal exercise of the activity of the air carrier concerned and is not outside its actual control, unless such a failure is not intrinsically linked to the operating system of the aircraft, which it is for the referring court to determine.
- 43 In the light of the foregoing considerations, the answer to the second question is that Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that an air carrier may not rely, for the purposes of being released from its obligation to pay compensation, on ‘extraordinary circumstances’, within the meaning of that provision, arising from the failure of a so-called ‘on condition’ part, that is to say, a part which is replaced only when it becomes defective, even though it permanently stocks a spare part, except where such a failure constitutes an event which, by its nature or origin, is not inherent in the normal exercise of the activity of the air carrier concerned and is outside its actual control, which it is for the

referring court to ascertain, it being considered, however, that, in so far as that failure is, in principle, intrinsically linked to the operating system of the aircraft, it must not be regarded as such an event.

Costs

- 44 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 (Eighth Chamber) hereby rules:

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, and in particular Article 7(1) thereof, must be interpreted as meaning that an air passenger who has received compensation for the cancellation of a flight and has accepted the re-routing flight offered to him is entitled to compensation for the delay of the re-routing flight, where that delay is such as to give rise to entitlement to compensation and the air carrier of the re-routing flight is the same as that of the cancelled flight.**
2. **Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that an air carrier may not rely, for the purposes of being released from its obligation to pay compensation, on ‘extraordinary circumstances’, within the meaning of that provision, arising from the failure of a so-called ‘on condition’ part, that is to say, a part which is replaced only when it becomes defective, even though it permanently stocks a spare part, except where such a failure constitutes an event which, by its nature or origin, is not inherent in the normal exercise of the activity of the air carrier concerned and is outside its actual control, which it is for the referring court to ascertain, it being considered, however, that, in so far as that failure is, in principle, intrinsically linked to the operating system of the aircraft, it must not be regarded as such an event.**

[Signatures]

* Language of the case: Finnish.