

## ORDER OF THE COURT (Fifth Chamber)

14 November 2014 (\*)

(Reference for a preliminary ruling — Rules of Procedure — Article 99 — Air transport — Regulation (EC) No 261/2004 — Long delay to a flight — Passengers' right to compensation — Conditions exempting an air carrier from its obligation to pay compensation — Notion of 'extraordinary circumstances' — Aircraft damaged by a set of mobile boarding stairs in the course of a preceding flight)

In Case C-394/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Rüsselsheim (Germany), made by decision of 12 August 2014, received at the Court on 18 August 2014, in the proceedings

**Sandy Siewert,**

**Emma Siewert,**

**Nele Siewert**

v

**Condor Flugdienst GmbH,**

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas, E. Juhász and D. Šváby (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court,

makes the following

### Order

- 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, on the one hand, Condor Flugdienst GmbH ('Condor'), an air carrier, and, on the other, Ms S. Siewert, Ms E. Siewert and Ms N. Siewert concerning Condor's refusal to compensate the applicants for a long delay to their flight.

### Legal context

- 3 Recitals 14 and 15 in the preamble to Regulation No 261/2004 state:

‘(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.’

4 Article 5 of Regulation No 261/2004 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 at paragraph 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).

...’

6 Article 13 of Regulation No 261/2004 is worded as follows:

‘In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.’

### **The facts in the main proceedings and the questions referred for a preliminary ruling**

7 The applicants in the case before the referring court booked a flight from Antalya (Turkey) to Frankfurt am Main with Condor.

8 That flight was carried out on 3 October 2011 with a delay in arrival of 6 hours and 30 minutes.

- 9 In support of its decision to refuse the request for compensation submitted by the applicants on the basis of the case-law of the Court of Justice read in conjunction with Article 5(3) and Article 7 of Regulation No 261/2004, Condor submits that the delay occurred because the aircraft which was due to operate the flight at issue had been damaged the previous evening at Stuttgart Airport. A set of mobile boarding stairs had collided with the aircraft, causing structural damage to a wing and, as a consequence, the aircraft had to be replaced. Therefore, Condor claims that these are ‘extraordinary circumstances’ within the meaning of Article 5(3) of Regulation No 261/2004, and that, accordingly, it is not obliged to pay compensation
- 10 The referring court is uncertain whether ‘extraordinary circumstances’ exempting the air carrier concerned from its obligation to pay compensation pursuant to Article 5(3) and Article 7 of Regulation No 261/2004 must relate directly to the flight at issue or whether such circumstances may also stem from events related to earlier journeys undertaken by the aircraft operating that flight.
- 11 In those circumstances, the Amtsgericht Rüsselsheim (Local Court, Rüsselsheim) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘1. Must the extraordinary circumstance within the meaning of Article 5(3) of Regulation No 261/2004 relate directly to the booked flight?
  2. If extraordinary circumstances which occur during earlier flights are also relevant to a later flight, must the reasonable measures to be taken by the operating air carrier, in accordance with Article 5(3) of Regulation No 261/2004, relate only to preventing the extraordinary circumstance or also to avoiding a long delay?
  3. Are adverse actions by third parties acting on their own responsibility and to whom certain tasks that constitute part of the operation of an air carrier have been entrusted to be deemed to be extraordinary circumstances within the meaning of Article 5(3) of Regulation No 261/2004?
  4. If the answer to Question 3 is in the affirmative, does the assessment of the situation depend on who (airline, airport operator, etc.) entrusted the task(s) to the third party?’

### **Consideration of the questions referred for a preliminary ruling**

- 12 Under Article 99 of the Rules of Procedure of the Court of Justice, where the reply to a question referred for a preliminary ruling may be clearly deduced from existing case-law or where the answer admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 13 It is appropriate to apply that provision in the present reference for a preliminary ruling.
- The third and fourth questions*
- 14 By its third and fourth questions, which it is appropriate to consider first, the referring court seeks, in essence, to ascertain whether Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that an event such as the collision of an airport’s set of mobile boarding stairs with an aircraft must be categorised as ‘extraordinary circumstances’ exempting the air carrier from its obligation to pay passengers compensation in the event of a long delay to a flight operated by the aircraft in question.
- 15 As a preliminary point, it should be noted that the EU legislature has laid down the obligations of air carriers in the event of cancellation or long delay of flights (that is, a delay equal to or in excess of three hours) in Article 5(1) of Regulation No 261/2004 (see, to that effect, judgments in *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 39, and *McDonagh*, C-12/11, EU:C:2013:43, paragraph 37).
- 16 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 exempted from its obligation to pay passengers compensation under Article 7 of Regulation No 261/2004 if the carrier 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 (judgment in *McDonagh*, EU:C:2013:43, paragraph 38 and the case-law cited).

- 17 Article 5(3) of Regulation No 261/2004 must be interpreted strictly since it constitutes a derogation from the principle that passengers have the right to compensation (judgment in *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 20). Moreover, not all extraordinary circumstances confer exemption and, in addition, 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 in *Eglitis and Ratnieks*, C-294/10, EU:C:2011:303, paragraph 25).
- 18 More specifically, as regards technical problems with an aircraft, the Court has held that, although such technical problems may be categorised as extraordinary circumstances, the fact remains that the circumstances surrounding such an event can be characterised as 'extraordinary' within the meaning of Article 5(3) of Regulation No 261/2004 only if they relate to an event which, like those listed in recital 14 of that regulation, 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 (judgment in *Wallentin-Hermann*, EU:C:2008:771, paragraph 23).
- 19 However, as regards a technical problem resulting from an airport's set of mobile boarding stairs colliding with an aircraft, it should be pointed out that such mobile stairs or gangways are indispensable to air passenger transport, enabling passengers to enter or leave the aircraft, and, accordingly, air carriers are regularly faced with situations arising from their use. Therefore, a collision between an aircraft and any such set of mobile boarding stairs must be regarded as an event inherent in the normal exercise of the activity of the air carrier. Furthermore, there is nothing to suggest that the damage suffered by the aircraft which was due to operate the flight at issue was caused by an act outside the category of normal airport services (such as an act of sabotage or terrorism) and would thus, applying the case-law of the Court (judgment in *Wallentin-Hermann*, EU:C:2008:771, paragraph 26), be covered by the term 'extraordinary circumstances', which is what Condor had to demonstrate before the referring court in accordance with the case-law cited in paragraph 17 above.
- 20 Consequently, such an event cannot be categorised as 'extraordinary circumstances' exempting the air carrier from its obligation to pay the passengers compensation in the event of a long delay to a flight.
- 21 Moreover, it should be noted that the discharge of obligations pursuant to Regulation No 261/2004 is without prejudice to air carriers' rights to seek compensation from any person who caused the delay, including third parties, as Article 13 of Regulation No 261/2004 provides (judgment in *Folkerts*, C-11/11, EU:C:2013:106, paragraph 44 and the case-law cited).
- 22 Having regard to the foregoing, the answer to the third and fourth questions is that Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that a situation where, as in the case before the referring court, an airport's set of mobile boarding stairs collides with an aircraft cannot be categorised as 'extraordinary circumstances' exempting the air carrier from its obligation to pay the passengers compensation in the event of a long delay to a flight operated by that aircraft.
- 23 In the light of the reply given to the third and fourth questions, it is unnecessary to answer the other questions referred.

### Costs

- 24 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.

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

**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, must be interpreted as meaning that a situation where, as in the case before the referring court, an airport's set of mobile boarding stairs collides with an aircraft cannot be categorised as 'extraordinary circumstances' exempting the air carrier from its obligation to pay the passengers compensation in the event of a long delay to a flight operated by that aircraft.**

[Signatures]

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\* Language of the case: German.