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WORKING SESSION

VILNIUS

12 MAY 2025

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FACTS

1. On 1st July 2024, the arrival of a flight departed from Warsaw airport to Crete airport (Greece), operated by SprintAir, was delayed by 3 hours and 49 minutes.
2. Some passengers of the delayed flight assigned their rights to compensation to Travelrefund. In accordance with Regulation No. 261/2004¹, Travelrefund asked the competent national court to order SprintAir to pay compensation of an amount of EUR 800 per passenger, plus interest.
3. The defendant, SprintAir, alleged that the delay was due to the fact that, first, the preceding flight had already been delayed by 1 hour and 17 minutes because of a shortage of staff responsible for checking in passengers. Secondly, the loading of baggage onto the plane had been slowed down as there had also been an insufficient number of staff of the airport operator responsible for that service, which gave rise to an extra delay of 2 hours and 13 minutes. Thirdly, the weather conditions arising after the doors were closed also delayed the flight by 19 minutes.
4. The first instance court rejected the claim stating that Article 5 of the Regulation No. 261/2004 refers to *Cancellation* of a flight, which is not applicable in the present case. In any case, the delay was beyond SprintAir powers, as explained by the defendant.

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



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5. Travelrefund appealed against the solution. It stated that according to the CJEU's caselaw, Articles 5 and 7 of Regulation No 261/2004, read in the light of the principle of equal treatment, was interpreted as meaning that passengers whose flights were delayed must be treated, for the purposes of the application of the right to compensation provided for in Article 7(1) of that regulation, as passengers whose flights are cancelled.
6. The appellant also underlined that Article 5(3) of the Regulation is not applicable in the present case as the delay of the flight could not be explained by extraordinary circumstances. Since SprintAir received the time slots for the preceding flight later than initially foreseen, it certainly knew that the flight in question would be delayed and it failed to adopt all reasonable measures in its power to avoid or reduce that delay. The shortage of staff of the operator of Warsaw airport, alleged by SprintAir to have caused the long delay of the flight in question, does not represent an '*exceptional circumstance*' within the meaning of Article 5(3) of Regulation No 261/2004. The baggage loading service being inherent in *the normal exercise of the activity of the air carrier*, within the meaning of the case-law of the Court of Justice, the fact of an insufficient number of that operator's staff cannot be classified as an '*exceptional circumstance*.'

TASKS

1. **You are the Appellate Court (delivering a final decision according to the domestic legislation) and you have to decide:**
 - a. To refer the case to the CJEU for an interpretation of the relevant *Article (s)....*of Regulation (EC) No 261/2004.
 - b. Decide the appeal without a referral to CJEU.
 - c. Other solution

Discuss with your colleagues the arguments.

2. **In case of a referral to CJEU, please decide on and draft the content of the question(s) referred.**

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LEGAL FRAMEWORK

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

Article 5 Cancellation

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, unless:

(...)

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.

Article 7 Right to compensation:

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

(a) EUR 250 for all flights of 1 500 kilometres or less;

(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;

(c) EUR 600 for all flights not falling under (a) or (b).

CJEU's case law

1. Judgment of 25 January 2024, *Laudamotion and Ryanair*, C-54/23, EU:C:2024:74, paragraph 19 and the case-law cited

2. Judgment of 7 July 2022, *SATA International – Azores Airlines (Failure of the refuelling system)*, C-308/21, EU:C:2022:533, para. 19 – 27

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3. Judgment of 11 May 2023, TAP Portugal (Death of the co-pilot), C-156/22 to C-158/22, EU:C:2023:393, paragraph 18 and the case-law cited

CHECK LIST

1. Do you have doubts about the interpretation of EU law applicable relevant to solve the case?
 - a. **TIP** – verify <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0261>
 - b. **Verify** -multilingual display
2. Are you under an obligation to refer or there is an option for your court?
3. Is it possible to abstain from making a reference if?
 - A. the Court had previously ruled on a materially identical question (acte éclairé) or
 - B. the correct interpretation of applicable Union law is obvious (acte clair)
 - to the courts of the other MS and to the CJEU,
 - in all language versions of the applicable Union law,
 - with regard to the particular terminology in all national legal systems of the MS,
 - in the light of the provisions of EU law as a whole.