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Judgment of the Court in Case C-405/23 | Touristic Aviation Services

Rights of air passengers: the shortage of airport staff for loading baggage which caused a long delay of a flight may constitute an “exceptional circumstance”

In 2021, the arrival of a flight which had departed from Cologne Bonn (Germany) and was destined for the Greek island of Kos, operated by the company TAS, was delayed by 3 hours and 49 minutes. There were several reasons for that delay, but it was mainly due to a shortage of staff at Cologne-Bonn airport available for loading baggage onto the plane.

A certain number of passengers affected by that delay assigned their possible rights to compensation to Flightright. That company brought an action against TAS before the German courts, claiming that that delay was attributable to TAS and could not be explained by extraordinary circumstances.

Under EU law ¹, an airline company is not required to pay compensation in relation to a long delay, that is to say a delay of more than three hours, if it can prove that the delay was caused by ‘exceptional circumstances’ which could not have been avoided even if all reasonable measures had been taken.

The German court before which the case was brought asks the Court of Justice whether the shortage of staff of the airport operator responsible for loading baggage onto planes may constitute an “exceptional circumstance”.

The Court responds in the affirmative: **the fact of there being an insufficient number of staff of the airport operator responsible for loading baggage onto planes may constitute an “exceptional circumstance”.**

An “exceptional circumstance” arises where, first, the event is not, by its nature or origin, inherent in the normal exercise of the activity of the airline company and, secondly is beyond its actual control.

It is for the German court to assess whether those two conditions are satisfied. Accordingly, it must, first, determine whether, in the present case, the failures in the baggage loading operations must be regarded as general failures. If that were the case, those failures would not be capable of constituting an event which is inherent in the normal exercise of the activity of the airline company. Secondly, it must determine whether those failures were beyond TAS’s control. That would not be the case, in particular, if TAS was able to exercise effective control over the airport operator.

Even if the German court were to determine that the shortage of staff at issue constitutes and “extraordinary circumstance”, TAS would, in order to be exempted from its obligation to pay compensation to passengers, also have to show, first, that that circumstance could not have been avoided even if all reasonable measures had been taken, and, secondly, that it adopted all measures appropriate to the situation to remedy the consequences stemming from it.

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 EU law or the validity of an EU 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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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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.