Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

11 June 2020*

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 5(3) — Article 7(1) — Compensation to passengers in the event of denied boarding and of cancellation or long delay of flights — Exemption — Concept of 'extraordinary circumstances' — Unruly passengers — Possibility of relying on the occurrence of an extraordinary circumstance in respect of a flight not affected by that circumstance– Concept of 'reasonable measures')

In Case C-74/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Judicial da Comarca de Lisboa (District Court, Lisbon, Portugal), made by decision of 21 January 2019, received at the Court on 31 January 2019, in the proceedings

LE

v

Transport Aéreos Portugueses SA,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, S. Rodin, D. Šváby (Rapporteur), K. Jürimäe and N. Piçarra, Judges,

Advocate General: P. Pikamäe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 December 2019,

after considering the observations submitted on behalf of:

– Transportes Aéreos Portugueses SA, by M. Riso, advogada,

– the Portuguese Government, by L. Inez Fernandes, P. Lacerda, P. Barros da Costa and L. Guerreiro, acting as Agents,

– the German Government, by J. Möller, M. Hellmann, U. Bartl and A. Berg, acting as Agents,

– the French Government, by A.-L. Desjonquères and A. Ferrand, acting as Agents,

– the Austrian Government, initially by G. Hesse, and subsequently by J. Schmoll, acting as Agents,

* Language of the case: Portuguese.

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by B. Rechena and N. Yerrell, acting as Agents,

– the European Aviation Safety Agency (EASA), by S. Rostren and R. Sousa Uva, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 February 2020,

gives the following

Judgment

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 LE and Transportes Aéreos Portugueses SA ('TAP'), an air carrier, concerning TAP's refusal to compensate that passenger for a long delay to his flight.

Legal context

International law

The Tokyo Convention

3 The Convention on Offences and Certain Other Acts Committed on Board Aircraft (United Nations Treaty Series, vol. 704, p. 219 ('the Tokyo Convention') was signed in Tokyo on 14 September 1963 and entered into force on 4 December 1969.

4 All the Member States are contracting parties to the Tokyo Convention, but not the European Union.

5 Article 1(1) of that convention provides:

'This Convention shall apply in respect of:

(a) offences against penal law;

(b) acts which, whether or not they are offences, may or do jeopardise the safety of the aircraft or of persons or property therein or which jeopardise good order and discipline on board.'

6 Article 6(1) of that convention provides:

'The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

(a) to protect the safety of the aircraft, or of persons or property therein; or

(b) to maintain good order and discipline on board; or

(c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.'

7 Following the entry into force on 1 January 2020 of the Protocol amending the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Montreal on 4 April 2014, Article 6 of the Tokyo Convention was amended. However, that amendment does not apply, at least *ratione temporis*, to the facts in the main proceedings.

The EEA Agreement

8 Under the chapter entitled 'Transport', Article 47(2) of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3), as amended by the Agreement on the participation of the Republic of Bulgaria and Romania in the European Economic Area (OJ 2007 L 221, p. 15) ('the EEA Agreement'), provides that Annex XIII to the EEA Agreement contains specific provisions on all modes of transport.

9 Article 126(1) of that agreement is worded in the following terms:

'The Agreement shall apply to the territories to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty, and to the territories of Iceland, the Principality of Liechtenstein and the Kingdom of Norway.'

10 Under the heading 'References to territories', point 8 of Protocol 1 to that agreement provides:

'Whenever the acts referred to contain references to the territory of the "Community" or of the "common market" the references shall for the purposes of the Agreement be understood to be references to the territories of the Contracting Parties as defined in Article 126 of the Agreement.'

11 Under the heading 'Introduction', Annex XIII to the EEA Agreement, entitled 'Transport– List provided for in Article 47' states:

'When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as

– preambles;

– the addressees of the Community acts;

– references to territories or languages of the EC;

– references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other, and

– references to information and notification procedures;

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.'

EU law

Regulation No 261/2004

12 Recitals 1 and 13 to 15 of Regulation No 261/2004 state:

‘(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.

…

(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 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 measures had been taken by the air carrier concerned to avoid the delays or cancellations.’

13 Article 3(1) of Regulation No 261/2004 provides:

‘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.’

14 Article 5 of that regulation 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.

…’

15 Under the heading ‘Right to compensation’, Article 7(1) of that regulation provides:

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

…

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

…’

16 Under the heading ‘Right to reimbursement or re-routing’, Article 8(1) of Regulation No 261/2004 provides:

‘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.’

Regulation (EC) No 216/2008

17 Under point 7.d. of Annex IV, entitled ‘Essential requirements for air operations referred to in Article 8’, of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ 2008 L 79, p. 1):

‘In an emergency situation, which endangers the operation or the safety of the aircraft and/or persons on board, the pilot in command must take any action he/she considers necessary in the interest of safety. …’

18 Regulation No 216/2008 was repealed with effect from 11 September 2018 by Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ 2018 L 212, p. 1). Regulation 2018/1139 is not, however, applicable *ratione temporis* to the dispute in the main proceedings.

Regulation No 965/2012

19 'CAT.GEN.MPA.105 Responsibilities of the commander', under (a), of Annex IV, headed 'Commercial air transport operations', to Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 (OJ 2012 L 296, p. 1), as amended by Commission Regulation (EU) No 800/2013 of 14 August 2013 (OJ 2013 L 227, p. 1) ('Regulation No 965/2012'), states:

'The commander, in addition to complying with CAT.GEN.MPA.100, shall:

…

(4) have authority to disembark any person, or any part of the cargo, that may represent a potential hazard to the safety of the aircraft or its occupants;

(5) not allow a person to be carried in the aircraft who appears to be under the influence of alcohol or drugs to the extent that the safety of the aircraft or its occupants is likely to be endangered;

…'

20 'CAT.GEN.MPA.110 Authority of the commander' of that annex is worded as follows:

'The operator shall take all reasonable measures to ensure that all persons carried in the aircraft obey all lawful commands given by the commander for the purpose of securing the safety of the aircraft and of persons or property carried therein.'

Regulation (EU) No 376/2014

21 Article 2(7) of Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (OJ 2014 L 122, p. 18), provides:

'For the purposes of this Regulation the following definitions apply:

…

(7) 'occurrence' means any safety-related event which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular an accident or serious incident'.

22 Article 4(l)(a) of Regulation No 376/2014 provides:

'Occurrences which may represent a significant risk to aviation safety and which fall into the following categories shall be reported by the persons listed in paragraph 6 through the mandatory occurrence reporting systems pursuant to this Article:

(a) occurrences related to the operation of the aircraft, such as:
   (i) collision-related occurrences;
   (ii) take-off and landing-related occurrences;
   (iii) fuel-related occurrences;
   (iv) in-flight occurrences;

(v) communication-related occurrences;
(vi) occurrences related to injury, emergencies and other critical situations;
(vii) crew incapacitation and other crew-related occurrences;
(viii) meteorological conditions or security-related occurrences'.

Implementing Regulation (EU) 2015/1018

23 Commission Implementing Regulation (EU) 2015/1018 of 29 June 2015 laying down a list classifying occurrences in civil aviation to be mandatorily reported according to Regulation (EU) No 376/2014 (OJ 2015 L 163, p. 1), states:

'The detailed classification of the occurrences to be referred to when reporting, through mandatory reporting systems, occurrences pursuant to Article 4(1) of Regulation [No 376/2014] is set out in Annexes I to V to this Regulation.'

24 Title 6(2) of Annex I to Implementing Regulation 2015/1018 lays down, as occurrences referred to in Article 4(1) of Regulation No 376/2014 in relation to security, 'difficulty in controlling intoxicated, violent or unruly passengers'.

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

25 LE made a reservation with TAP for a flight from Fortaleza (Brazil) to Oslo (Norway) with a stopover in Lisbon (Portugal).

26 That flight was operated on 21 and 22 August 2017 with a delay in arrival in Oslo of almost 24 hours. That delay was due to the fact that LE was unable to board the second leg of the connecting flight from Lisbon to Oslo because of a delay in the arrival of the first flight from Fortaleza to Lisbon. That delay was due to the fact that the aircraft which operated that flight, on its previous flight from Lisbon to Fortaleza, had had to be diverted to Las Palmas de Gran Canaria (Spain) in order to disembark an unruly passenger who had bitten a passenger and assaulted other passengers and members of the cabin crew. LE was therefore flown to Oslo on the next flight operated by TAP the following day.

27 On account of that delay of more than three hours, LE asked TAP to pay the compensation of EUR 600 provided for in Article 5(1)(c) of Regulation No 261/2004, read in conjunction with Article 7(1)(a) of that regulation, as interpreted by the Court.

28 Since TAP refused to pay that compensation on the ground that the long delay in question was due to extraordinary circumstances and that sending another aircraft would not have made it possible to remedy that delay, LE brought an action before the Tribunal Judicial da Comarca de Lisboa (District Court, Lisbon, Portugal).

29 The national court has doubts as to the legal classification of the circumstances giving rise to that delay, concerning whether an operating air carrier may rely on such circumstances when they affected the aircraft which made the flight concerned, but on the occasion of a flight prior to that flight, and as to the reasonableness of the measures implemented by that carrier.

30 In those circumstances, the Tribunal Judicial da Comarca de Lisboa (District Court, Lisbon) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the fact that a passenger, in the course of a flight, bites other passengers and assaults crew members who attempt to calm him to such an extent as to justify, according to the flight commander, a diversion to the nearest airport to disembark that passenger and unload his luggage, which results in the delayed arrival of the flight at its destination, fall within the concept of 'extraordinary circumstances', referred to in recital 14 of Regulation (EC) No 261/2004?

(2) Is an 'extraordinary circumstance' which occurs on an outward flight immediately preceding the return flight made by the same aircraft, relevant to exempt the air carrier from liability for the delay in the take-off of that latter flight onto which the complainant passenger (the applicant in this case) has boarded?

(3) For the purposes of Article 5(3) of Regulation No 261/2004, does the analysis carried out by the airline (the defendant in this case), which concluded that sending another aircraft would not avoid the situation of delay and therefore the transfer of the transit passenger (the applicant in this case) to a flight scheduled for the following day, since the airline operates only one daily flight to the passenger's final destination, correspond to conduct by the airline in which it took all reasonable measures, even if it was not possible to remedy the delay?'

Consideration of the questions referred

Preliminary remark

31 Regulation No 261/2004, in accordance with Article 3(1)(b) thereof, applies, inter alia, 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 TFEU applies, unless those passengers 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.

32 However, pursuant to Article 47(2) of the EEA Agreement, read in conjunction with Article 126(1) thereof, point 8 of Protocol 1 to that agreement and Annex XIII to that agreement, Regulation 261/2004 is to apply, under the conditions laid down therein, to flights from or to an airport situated in Norwegian territory.

33 Accordingly, and in so far as no reference was made in the course of the proceedings before the Court to the effect that the passenger concerned received benefits or compensation and was given assistance in Brazil, which, however, it is for the national court to verify, a connecting flight operated by a Community carrier, in this case TAP, departing from Fortaleza and having its final destination in Oslo falls within the scope of Regulation No 261/2004.

The first question

34 By its first question, the national court asks, in essence, whether Article 5(3) of Regulation No 261/2004, read in the light of recital 14 of that regulation, must be interpreted as meaning that the unruly behaviour of a passenger which has justified the flight commander of the aircraft diverting the flight concerned to an airport other than the airport of arrival in order to disembark that passenger and his baggage falls within the concept of 'extraordinary circumstances' within the meaning of that provision.

35 It must be borne in mind 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 (judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 18).

36 Recitals 14 and 15 and Article 5(3) of that regulation, as interpreted by the Court, state that an air carrier is to be released from its obligation to pay passengers compensation under Article 7 of Regulation No 261/2004 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 and, 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 avoid that situation from resulting in the cancellation or long delay of the flight in question, without the air carrier being required to make intolerable sacrifices in the light of the capacities of its undertaking at the relevant time (judgment of 4 April 2019, *Germanwings*, C-501/17, EU:C:2019:288, paragraph 19).

37 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 12 March 2020, *Finnair*, C-832/18, EU:C:2020:204, paragraph 38).

38 According to recital 14 of that regulation, such circumstances may, in particular, occur in the case of security risks (judgment of 22 December 2008, *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 21).

39 However, it is common ground that the unruly behaviour of a passenger which justified the pilot in command of the aircraft, who is responsible, in accordance with Article 6 of the Tokyo Convention and point 7.d of Annex IV to Regulation No 216/2008, for taking all necessary measures in the interests of safety, diverting the flight concerned to an airport other than the airport of arrival in order to disembark that passenger and his baggage jeopardises the safety of that flight.

40 It should be noted, in that regard, that the EU legislature has indicated, as is apparent from Article 4(1)(a) of Regulation No 376/2014, read in conjunction with Article 2(7) of that regulation, Article 1 of Implementing Regulation 2015/1018 and title 6(2) of Annex I to that regulation, that difficulties in controlling intoxicated, violent or unruly passengers are likely to pose a significant risk to aviation safety and therefore should be reported through the mandatory occurrence reporting systems provided for in Article 4(1) of Regulation No 376/2014.

41 Furthermore, first, unruly behaviour of such gravity as to justify the pilot in command diverting the flight concerned is not inherent in the normal exercise of the activity of the operating air carrier concerned.

42 Even though the carriage of passengers by air is the primary mission of that carrier and naturally exposes it to the duty to manage the behaviour of the passengers it carries, the fact remains that behaviour such as that at issue in the main proceedings does not constitute behaviour which can be expected of a passenger who is responsible not only for complying with all orders issued by the commander in order to ensure safety on board, in accordance with 'CAT.GEN.MPA.110 Authority of the commander' of Annex IV to Regulation No 965/2012, but also for ensuring that he does not himself jeopardise the proper performance of the contract of carriage between himself and the operating air carrier concerned.

43 Secondly, such behaviour is not, in principle, under the control of the operating air carrier concerned, since, first, it is the act of a passenger whose behaviour and reactions to the crew's requests are not, in principle, foreseeable and, secondly, on board an aircraft, both the commander and the crew have only limited means of controlling such a passenger.

44 In that regard, it should be noted that the decision taken by the pilot in command, in reaction to that behaviour, to divert the aircraft in order to disembark that passenger and his baggage, in accordance with 'CAT.GEN.MPA.105 Responsibilities of the commander', under (a) of Annex IV to Regulation No 965/2012, was taken as part of his responsibility, under Article 8 and point 7.d of Annex IV to Regulation No 216/2008, to adopt any measure he deems necessary in the interests of safety.

45 However, that is not the case if it is apparent, which is for the national court to ascertain, that the operating air carrier concerned appears to have contributed to the occurrence of the unruly behaviour of the passenger concerned or if that carrier was in a position to anticipate such behaviour and to take appropriate measures at a time when it was able to do so without any significant consequence for the operation of the flight concerned, on the basis of warning signs of such behaviour.

46 In the latter regard, that may be the case in particular, as was noted by the Advocate General in point 51 of his Opinion, the French and Austrian Governments and the European Commission, where the operating air carrier has taken on board a passenger already displaying behavioural problems before or even during boarding, even though, in accordance with 'NCC.GEN.106 Responsibilities and Authority of the Pilot in Command', point (b) of Annex VI to Regulation No 965/2012, the pilot in command is to have the authority to refuse to carry or disembark any person, baggage or cargo which may constitute a potential risk to the safety of the aeroplane or its occupants.

47 In such a case, the unruly behaviour of a passenger, although not inherent in the normal exercise of the activity of the air carrier concerned, would nevertheless have been within the control of that carrier, which precludes such behaviour from being classified as an 'extraordinary circumstance', within the meaning of Article 5(3) of Regulation No 261/2004.

48 In the light of the foregoing, the answer to the first question is that Article 5(3) of Regulation No 261/2004, read in the light of recital 14 of that regulation, must be interpreted as meaning that the unruly behaviour of a passenger which has justified the pilot in command of the aircraft in diverting the flight concerned to an airport other than the airport of arrival in order to disembark that passenger and his baggage falls within the concept of 'extraordinary circumstances', within the meaning of that provision, unless the operating air carrier contributed to the occurrence of that behaviour or failed to take appropriate measures in view of the warning signs of such behaviour, which it is for the national court to verify.

The second question

49 By its second question, the national court asks, in essence, whether Article 5(3) of Regulation No 261/2004, read in the light of recital 14 of that regulation, must be interpreted as meaning that, in order to be relieved of its obligation to compensate passengers in the event of a long delay or cancellation of a flight, an operating air carrier may rely on an 'extraordinary circumstance' which affected not that cancelled or delayed flight but a previous flight which it operated using the same aircraft.

50 As noted in paragraph 36 of this judgment, the air carrier may be released from its obligation to compensate passengers under Article 5(1) and Article 7 of Regulation No 261/2004 if it is able to prove, inter alia, that the cancellation or long delay of the flight concerned was due to 'extraordinary circumstances'.

51 In that regard, it should be noted, first, that neither recitals 14 and 15 of Regulation No 261/2004 nor Article 5(3) of that regulation limit the right of an operating air carrier to rely on an 'extraordinary circumstance' to situations where that circumstance affected the delayed or cancelled flight, to the exclusion of the situation where that circumstance affected a previous flight operated by the same aircraft.

52 Secondly, the balancing of the interests of air passengers and air carriers which led to the adoption of Regulation 261/2004 (judgments of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraph 67, and of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 39) implies that account must be taken of the way in which aircraft are operated by air carriers and, in particular, of the fact, referred to by the interested parties who took part in these proceedings, that, at least for certain categories of flights, the same aircraft may carry out several successive flights on the same day, which means that any extraordinary circumstances affecting an aircraft on a previous flight affects the subsequent flight or flights of that aircraft.

53 Therefore, an operating air carrier must be able to rely on an 'extraordinary circumstance' affecting a previous flight which it operates with the same aircraft in order to be exempted from its obligation to compensate passengers in the event of long delay or cancellation of a flight.

54 However, and taking into account not only the objective referred to in recital 1 of Regulation No 261/2004 to ensure a high level of protection for passengers, but also the wording of Article 5(3) of that regulation, reliance on such an extraordinary circumstance presupposes that there is a direct causal link between the occurrence of that circumstance which affected a previous flight and the delay or cancellation of a subsequent flight, which is for the national court to determine in the light of the facts available to it and taking into account, inter alia, the conditions of operation of the aircraft concerned.

55 In the light of the foregoing, the answer to the second question is that Article 5(3) of Regulation No 261/2004, read in the light of recital 14 of that regulation, must be interpreted as meaning that, in order to be exempted from its obligation to compensate passengers in the event of a long delay or cancellation of a flight, an operating air carrier may rely on an 'extraordinary circumstance' which affected a previous flight which it operated using the same aircraft, provided that there is a direct causal link between the occurrence of that circumstance and the delay or cancellation of the subsequent flight, which is for the national court to determine, having regard in particular to the conditions of operation of the aircraft in question by the operating air carrier concerned.

The third question

56 By its third question, the national court asks, in essence, whether Article 5(3) of Regulation No 261/2004, read in the light of recital 14 of that regulation, must be interpreted as meaning that the fact of an air carrier re-routing a passenger, on the ground that the aircraft carrying that passenger was affected by an extraordinary circumstance, by means of a flight operated by itself and resulting in that passenger arriving on the day following the day originally scheduled constitutes a 'reasonable measure' releasing that carrier from its obligation to pay compensation under Article 5(1)(c) and Article 7(1) of that regulation.

57 As noted in paragraph 36 above, in the event of the occurrence of an extraordinary circumstance, the operating air carrier is released from its obligation to pay compensation under Article 5(1)(c) and Article 7(1), of Regulation No 261/2004 only if it is able to prove that it adopted the measures appropriate to the situation by deploying all its resources in terms of staff or equipment and the financial means at its disposal, in order to avoid that circumstance leading to the cancellation or long delay of the flight concerned, without it being possible to require it to make intolerable sacrifices in the light of the capacities of its undertaking at the relevant time.

58 It follows from this, in accordance with the objective of ensuring a high level of protection for passengers referred to in recital 1 of Regulation No 261/2004 and the requirement of reasonable, satisfactory and timely re-routing of passengers affected by a cancellation or long delay of a flight, referred to in recitals 12 and 13 and in Article 8(1) of that regulation, that, in the event of an extraordinary circumstance arising, an air carrier which seeks to be released from its obligation to compensate passengers, as provided for in Article 5(1)(c) and Article 7 of that regulation, by adopting the reasonable measures referred to in the previous paragraph cannot, in principle, merely offer to re-route the passengers concerned to their final destination on the next flight operated by that airline which arrives at their destination on the day following the day originally scheduled for their arrival.

59 Indeed, the care and attention required of that air carrier in order to enable it to be exempted from its obligation to pay compensation presupposes that it deploys all the resources at its disposal to ensure reasonable, satisfactory and timely re-routing, including seeking alternative direct or indirect flights which may be operated by other air carriers, whether or not belonging to the same airline alliance, arriving at a scheduled time that is not as late as the next flight of the air carrier concerned.

60 Therefore, it is only where there are no seats available on another direct or indirect flight enabling the passenger concerned to reach his or her final destination at a time which is not as late as the next flight of the air carrier concerned, or where the implementation of such re-routing constitutes an unbearable sacrifice for that air carrier in the light of the capacities of its undertaking at the relevant time, that that air carrier must be considered to have deployed all the resources at its disposal by re-routing the passenger concerned on the next flight operated by it.

61 Therefore, the answer to the third question is that Article 5(3) of Regulation No 261/2004, read in the light of recital 14 of that regulation, must be interpreted as meaning that for an air carrier to re-route a passenger, on the ground that the aircraft carrying that passenger was affected by an extraordinary circumstance, by means of a flight operated by that carrier and resulting in that passenger arriving on the day following the day originally scheduled, does not constitute a 'reasonable measure' releasing that carrier from its obligation to pay compensation under Article 5(1)(c) and Article 7(1) of that regulation, unless there was no other possibility of direct or indirect re-routing by a flight operated by itself or any other air carrier and arriving at a time which was not as late as the next flight of the air carrier concerned or unless the implementation of such re-routing constituted an intolerable sacrifice for that air carrier in the light of the capacities of its undertaking at the relevant time, which is a matter for the national court to assess.

Costs

62 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 (Fourth Chamber) hereby rules:

1. **Article 5(3) of Regulation 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, read in the light of recital 14 of that regulation, must be interpreted as meaning that the unruly behaviour of a passenger which has justified the pilot in command of the aircraft in diverting the flight concerned to an airport other than the airport of arrival in order to disembark that passenger and his baggage falls within the concept of 'extraordinary circumstances', within the meaning of that provision, unless the**

operating air carrier contributed to the occurrence of that behaviour or failed to take appropriate measures in view of the warning signs of such behaviour, which it is for the national court to verify.

2. **Article 5(3) of Regulation No 261/2004, read in the light of recital 14 of that regulation, must be interpreted as meaning that, in order to be exempted from its obligation to compensate passengers in the event of a long delay or cancellation of a flight, an operating air carrier may rely on an 'extraordinary circumstance' which affected a previous flight which it operated using the same aircraft, provided that there is a direct causal link between the occurrence of that circumstance and the delay or cancellation of the subsequent flight, which is for the national court to determine, having regard in particular to the conditions of operation of the aircraft in question by the operating air carrier concerned.**

3. **Article 5(3) of Regulation No 261/2004, read in the light of recital 14 of that regulation, must be interpreted as meaning that for an air carrier to re-route a passenger, on the ground that the aircraft carrying that passenger was affected by an extraordinary circumstance, by means of a flight operated by that carrier and resulting in that passenger arriving on the day following the day originally scheduled, does not constitute a 'reasonable measure' releasing that carrier from its obligation to pay compensation under Article 5(1)(c) and Article 7(1) of that regulation, unless there was no other possibility of direct or indirect re-routing by a flight operated by itself or any other air carrier and arriving at a time which was not as late as the next flight of the air carrier concerned or unless the implementation of such re-routing constituted an intolerable sacrifice for that air carrier in the light of the capacities of its undertaking at the relevant time, which is a matter for the national court to assess.**

[Signatures]