Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

17 September 2015*

(Reference for a preliminary ruling — Air transport — Passengers' rights in the event of delay or cancellation of a flight — Regulation (EC) No 261/2004 — Article 5(3) — Denied boarding and cancellation — Long flight delay — Compensation and assistance to passengers — Extraordinary circumstances)

In Case C-257/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (Netherlands), made by decision of 29 April 2014, received at the Court on 28 May 2014, in the proceedings

Corina van der Lans

v

Koninklijke Luchtvaart Maatschappij NV,

THE COURT (Ninth Chamber),

composed of K. Jürimäe, President of the Chamber, J. Malenovský (Rapporteur) and M. Safjan, Judges,

Advocate General: E. Sharpston,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 7 May 2015,

after considering the observations submitted on behalf of:

— Koninklijke Luchtvaart Maatschappij NV, by P. Eijsvoogel, P. Huizing, R. Pessers and M. Lustenhouwer, advocaten,

— the Netherlands Government, by M. Bulterman and M. Noort, acting as Agents,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the French Government, by G. de Bergues, D. Colas, and R. Coesme, and by M. Hours, acting as Agents,

— the Italian Government, by G. Palmieri acting as Agent and C. Colelli, avvocato dello Stato,

* Language of the case: Dutch.

— the United Kingdom Government, by L. Christie, acting as Agent, and J. Holmes, Barrister,

— the European Commission, by F. Wilman and N. Yerrell, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation 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 Ms van der Lans and the airline Koninklijke Luchtvaart Maatschappij NV ('KLM') concerning the latter's refusal to compensate the applicant in the main proceedings for delay to her flight.

Legal context

3 Regulation No 261/2004 includes the following recitals:

'(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.

…

(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 3(1)(b) of that regulation, entitled 'Scope', provides:

'1. This Regulation shall apply:

…

(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.'

5 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.

…'

6 Article 7 of Regulation No 261/2004, headed 'Right to compensation', provides:

'1. 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).

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 1 500 kilometres or less; or

(b) by three hours, in respect of all intra-Community flights of more than 1 500 kilometres and for all other flights between 1 500 and 3 500 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.'

7 Article 13 of Regulation No 261/2004 provides:

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

8 Ms van der Lans had a ticket reservation on a flight operated by KLM. That flight to Amsterdam (Netherlands) was to depart from Quito (Ecuador) on 13 August 2009 at 9.15 local time. However, the flight did not depart until the following day at 19.30 local time. The aircraft used for that flight arrived in Amsterdam with a delay of 29 hours.

9 According to KLM, the delay was due to the fact that at Guayaquil Airport (Ecuador), from which that aircraft should have departed for Amsterdam via Quito and Bonaire (Dutch Antilles), it was discovered during the ‘push back’, a ground procedure which involves the aircraft being pushed backwards using a vehicle, that one of the aircraft engines did not start due to the lack of fuel feed.

10 According to KLM, it appears from the aircraft technical log that a combination of defects occurred. Two components were defective, namely, the engine fuel pump and the hydro mechanical unit. The components concerned were not available in Guayaquil and had to be flown in from Amsterdam in order to be installed in the aircraft concerned, which took off from Quito with the delay mentioned in paragraph 8 of the present judgment.

11 Those components were not examined further with a view to establishing the cause of the failure as such an examination can be carried out only by their manufacturer.

12 Ms van der Lans brought an action before the Rechtbank Amsterdam (District Court, Amsterdam) seeking compensation of EUR 600 on account of that delay.

13 KLM opposes that claim and relies on the exception provided for in Article 5(3) of Regulation No 261/2004 in case of ‘extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken’.

14 According to KLM, the defective components had not exceeded their average lifetime. Furthermore, their manufacturer had not provided any specific indication as to which defects might arise if those components reached a certain age. KLM also claims that those components had not been tested before take-off, during the general ‘pre-flight check’, but that they had been tested during the last ‘A Check’ carried out about one month before the flight at issue in the main proceedings.

15 Ms van der Lans argues that, in this case, KLM cannot rely on the occurrence of extraordinary circumstances. The delay to that flight was caused by a technical problem. In the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771), the Court held that the resolution of technical problems is inherent in the exercise of the activity of the air carrier concerned and cannot be classified as extraordinary circumstances.

16 The dispute in the main proceedings concerns the question whether the exception provided for in Article 5(3) of Regulation No 261/2004 may be relied on by KLM in circumstances such as those at issue in the main proceedings.

17 In that connection, the referring court seeks to clarify the interpretation to be given to the expressions 'extraordinary circumstances' and 'all reasonable measures' in that provision, in particular, whether account must be taken, in that regard, of recital 14 in Regulation No 261/2004 and the relevant case-law of the Court, in particular the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771).

18 In those circumstances, the Rechtbank Amsterdam decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) How must the concept of "event" in recital 14 of the preamble in Regulation No 261/2004 be interpreted?

(2) Having regard to paragraph 22 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771), extraordinary circumstances such as those referred to in recital 14 do not coincide with the occurrences listed as examples in the second sentence of recital 14, occurrences cited as events by the Court of Justice in paragraph 22. Is it correct that the events as referred to in the paragraph 22 of that judgment are not the same as the "event" in recital 14 of the preamble?

(3) What should be understood by the concept of extraordinary circumstances which, according to paragraph 23 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771), surround the event and which are "unexpected flight safety shortcomings" as referred to in the aforesaid recital 14 if, in the light of paragraph 22, unexpected flight safety shortcomings cannot themselves constitute extraordinary circumstances but may only produce such circumstances?

(4) It is apparent from paragraph 23 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771) that a technical problem can be considered to be covered by "unexpected flight safety shortcomings" and is therefore an "event" within the meaning of paragraph 22 of that judgment; the circumstances surrounding that event may nevertheless be regarded as extraordinary if they relate to an event which is not inherent in the normal exercise of the activities of the air carrier and beyond the actual control of that carrier on account of its nature or origin, as provided in paragraph 23 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771); according to paragraph 24 thereof, the resolution of a technical problem which can be traced back to poor maintenance of an aircraft is inherent in the normal exercise of an air carrier's activity; therefore, according to paragraph 25 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771) such technical problems cannot constitute extraordinary circumstances. It appears to follow from those paragraphs that a technical problem which is covered by "unexpected flight safety shortcomings" is simultaneously an event which may be surrounded by extraordinary circumstances and may itself constitute an extraordinary circumstance. How should paragraphs 22 to 25 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771) be interpreted in order to resolve that apparent contradiction?

(5) The words: "inherent in the normal exercise of an air carrier's activity" are consistently interpreted in the case-law of the lower courts as: "associated with the normal activities of the airline" — which is moreover an interpretation which is compatible with the Netherlands word "inherent" (not the authentic text of the judgment) — so that, for example, collisions with birds or ash clouds are also not regarded as events within the meaning of paragraph 23 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771). Other case-law emphasises the words: "and is beyond the actual control of that carrier on account of its nature or origin", likewise in paragraph 23 of that judgment. Must "inherent in" be interpreted as meaning that only events which are within the actual control of the air carrier are covered by that concept?

(6) How should paragraph 26 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771) be read, or rather, how should that paragraph be interpreted, in the light of the answer of the Court of Justice to questions 4 and 5?

(7) (a) If question 6 is answered to the effect that technical problems which may be considered to be unexpected flight safety shortcomings constitute extraordinary circumstances which may justify invoking Article 5(3) of Regulation No 261/2004 if they arise from an event which is not inherent in the exercise of the activities of the airline and is beyond the actual control of the latter, does that then mean that a technical problem which arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks (the "A-D Checks" and "the Daily Control") can or cannot constitute an extraordinary circumstance — on the assumption that it could not be detected during the regular maintenance operations — because then no event as referred to in paragraph 26 can be identified and it is therefore also not possible to determine whether such an event is inherent in the exercise of the activities of the airline and is thus beyond the control of the air carrier?

(b) If question 6 is answered to the effect that technical problems which may be considered to be unexpected flight safety shortcomings are events as referred to in paragraph 22 and the technical problem arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks ("the A-D Checks" and "the Daily Control"), is that technical problem inherent or not inherent in the exercise of the activities of the airline and is it or is it not thus beyond the actual control of the airline within the meaning of the aforementioned paragraph 26?

(c) If question 6 is answered to the effect that technical problems which may be considered to be unexpected flight safety shortcomings are events as referred to in paragraph 22 of the judgment in *Wallentin-Hermann* (C-549/07, EU:C:2008:771) and the technical problem arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks ("the A-D Checks" and "the Daily Control"), what circumstances should then surround that technical problem and when should those circumstances be regarded as extraordinary so that they may be relied upon for the purposes of Article 5(3) of Regulation No 261/2004?

(8) An air carrier can rely on extraordinary circumstances only if it can prove that the cancellation or delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Is it correct to conclude that the taking of all reasonable measures refers to the avoidance of the occurrence of extraordinary circumstances and not to the taking of measures to keep the delay within the three-hour limit referred to in Article 5(1)(c)(iii) of Regulation No 261/2004 in conjunction with paragraphs 57 to 61 of the judgment in *Sturgeon and Others* (C-402/07 and C-432/07, EU:C:2009:716)?

(9) In principle, there are two types of measures to limit delays caused by technical problems to a maximum of three hours, namely, on the one hand, holding stocks of spare components in various parts of the world, thus not only at the home base of the air carrier, and, on the other hand, the rebooking of the passengers of the delayed flight. In determining the stock levels which they hold and the places in the world where they do so, may the air carriers have regard to what is customary in the aviation world, including for carriers which are only partially covered by the operation of Regulation No 261/2004?

(10) In answering the question whether all reasonable measures were taken to limit the delay which occurred as a result of technical problems which have an effect on the flight safety shortcomings, must the court take account of circumstances which aggravate the consequences of a delay, such

as the circumstance that the aircraft affected by the technical problems, before returning to its home base, must, as in the present case, call at a number of airports, which may result in an accumulation of time lost?'

Consideration of the questions referred for a preliminary ruling

Admissibility

19 The French Government challenges the admissibility of the request for a preliminary ruling on the ground that, in accordance with Article 3(1)(b) thereof, Regulation No 261/2004 is not applicable to the dispute in the main proceedings, since Ecuadorian law already provides for a compensation and assistance scheme for air passengers who are refused boarding or have their flights cancelled or delayed, for which Ms van der Lans is eligible.

20 According to settled case-law, the Court may decline to rule on a question referred for a preliminary ruling by a national court only where, inter alia, it is quite obvious that the provision of EU law referred to the Court for interpretation is incapable of applying (judgment in *Caja de Ahorros y Monte de Piedad de Madrid*, C-484/04, EU:C:2010:309, paragraph 19 and the case-law cited).

21 In that connection, it follows from Article 3(1)(b) of Regulation No 261/2004 that the latter applies to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State provided that, first, the operating air carrier of the flight concerned is an EU carrier and, second, the passengers concerned did not receive benefits or compensation and assistance in that third country.

22 As regards the first of those conditions, it is common ground that KLM is an EU carrier.

23 With respect to the second condition, it must be observed that there are differences between the various language versions of Article 3(1)(b) of Regulation No 261/2004. Certain versions, in particular the Czech, German, English, Italian and Dutch versions, use the words 'obdrželi', 'erhalten', 'received', 'ricevuto' and 'ontvangen'. Thus, they may be read as excluding the application of that regulation only if the passengers concerned have actually obtained the benefits or compensation and assistance in the third country concerned.

24 However, other language versions, such as, in particular, the Spanish ('disfruten de'), French (bénéficient de') and Romanian ('beneficiat de') suggest instead that the application of Regulation No 261/2004 is excluded at the outset where the passengers concerned are entitled to benefits or compensation and assistance in that third country, regardless of whether or not they actually received them.

25 The need for a uniform interpretation of a provision of EU law means that, where there is divergence between the various language versions of the provision, the latter must be interpreted by reference to the context and purpose of the rules of which it forms part (see, to that effect, judgment in *DR and TV2 Danmark*, C-510/10, EU:C:2012:244, paragraph 45, and *Bark*, C-89/12, EU:C:2013:276, paragraph 40).

26 In that regard, it suffices to state that Regulation No 261/2004, as is clear from recitals 1 and 2 in the preamble thereto, aims to ensure a high level of protection for passengers (see judgments in *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 69, and *Emirates Airlines*, C-173/07, EU:C:2008:400, paragraph 35).

27 Although Article 3(1)(b) of Regulation No 261/2004, read in the light of that objective, does not require it to be proved that the passenger concerned has actually obtained the benefits or compensation and assistance in a third country, the mere possibility of entitlement cannot of itself justify the conclusion that the regulation is not applicable to that passenger.

28 It cannot be accepted that a passenger may be deprived of the protection granted by Regulation No 261/2004 solely on the ground that he may benefit from some compensation in the third country, without any evidence that that compensation corresponds to the purpose of the compensation guaranteed by that regulation or that the conditions to which the beneficiary is subject and the various means of implementing it are equivalent to those provided for by that regulation.

29 It cannot be ascertained from the documents submitted to the Court either whether the purpose of the compensation provided for by the law of the third country concerned corresponds to that of the compensation guaranteed by Regulation No 261/2004 or whether the conditions to which the entitlement to such benefit is subject and the various means of implementing them are equivalent to those provided for by that regulation. It is for the national court to ascertain whether such is the case.

30 In those circumstances, the possibility cannot be ruled out that the provision whose interpretation is requested is applicable in the present case.

31 Accordingly, the reference for a preliminary ruling is admissible.

Substance

32 It should be observed as a preliminary point that, according to settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. With this in mind, the Court of Justice may have to reformulate the questions referred to it (see, inter alia, judgment in *Le Rayon d'Or*, C-151/13, EU:C:2014:185, paragraph 25 and the case-law cited).

33 Taking account of that case-law, all 10 questions referred by the national court must be understood as asking essentially whether Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that a technical problem, such as that at issue in the main proceedings, which occurred unexpectedly, which is not attributable to defective maintenance and which was not detected during regular tests, falls within the definition of 'extraordinary circumstances' within the meaning of that provision and, if so, what the reasonable measures are that the air carrier must take to deal with them.

34 In that regard, it must be observed, first of all, that, pursuant to Article 5(3) of Regulation No 261/2004, an operating air carrier is not 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.

35 Next, it should be recalled that the Court has stated that, since it constitutes a derogation from the principle that passengers have the right to compensation, Article 5(3) must be interpreted strictly (judgment in *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 20).

36 Finally, as regards, more particularly, technical problems encountered by an aircraft, it follows from the case-law of the Court that such problems may be included among 'unexpected flight safety shortcomings', and although a technical problem in an aircraft may be amongst such shortcomings, 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 in 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 (see, to that effect, judgment in *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 23).

37 Since the functioning of aircraft inevitably gives rise to technical problems, air carriers are confronted as a matter of course in the exercise of their activity with such problems. In that connection, technical problems which come to light during maintenance of aircraft or on account of failure to carry out such maintenance cannot constitute, in themselves, 'extraordinary circumstances' under Article 5(3) of Regulation No 261/2004 (see, to that effect, judgment in *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraphs 24 and 25).

38 Nevertheless, certain technical problems may constitute extraordinary circumstances. That would be the case in the situation where it was revealed by the manufacturer of the aircraft comprising the fleet of the air carrier concerned, or by a competent authority, that those aircraft, although already in service, are affected by a hidden manufacturing defect which impinges on flight safety. The same would hold for damage to aircraft caused by acts of sabotage or terrorism (see, to that effect, judgment in *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 26).

39 In the present case, KLM states — a matter which is for the referring court to ascertain — that the technical problem at issue in the main proceedings consists in an engine failure of the aircraft concerned, due to certain defects in its parts which have not exceeded their average lifetime, and in respect of which the manufacturer has not given any indications as to defects which might arise if they reach a certain age.

40 In that connection, it appears, first of all, as is clear from the preceding paragraph of this judgment, that such a technical problem affects only one particular aircraft. Furthermore, there is no evidence of any kind in the documents before the Court that the manufacturer of the aircraft in the fleet of the air carrier concerned or a competent authority have disclosed, that not only that specific aircraft but also others in the fleet have been affected by a hidden manufacturing defect affecting the safety of flights, which is, in any event for the national court to ascertain. If that were the case, the legal hypothesis mentioned in paragraph 38 of this judgment would not be applicable in the present case.

41 Next, it must be observed, first, that it is true that a breakdown, such as that at issue in the main proceedings, caused by the premature malfunction of certain components of an aircraft, constitutes an unexpected event. Nevertheless, such a breakdown remains intrinsically linked to the very complex operating system of the aircraft, which is operated by the air carrier in conditions, particularly meteorological conditions, which are often difficult or even extreme, it being understood moreover that no component of an aircraft lasts forever.

42 Therefore, it must be held that, in the course of the activities of an air carrier, that unexpected event is inherent in the normal exercise of an air carrier's activity, as air carriers are confronted as a matter of course with unexpected technical problems.

43 Second, the prevention of such a breakdown or the repairs occasioned by it, including the replacement of a prematurely defective component, is not beyond the actual control of that carrier, since the latter is required to ensure the maintenance and proper functioning of the aircraft it operates for the purposes of its business.

44 Therefore, a technical problem, such as that at issue in the main proceedings, cannot fall within the definition of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004.

45 Lastly, it must be stated that, even assuming that, depending on the circumstances, an air carrier takes the view that it may rely on the fault of the manufacturer of certain defective components, the main objective of Regulation No 261/2004, which aims to ensure a high level of protection for passengers, and the strict interpretation to be given to Article 5(3) of that regulation, preclude the air carrier from justifying any refusal to compensate passengers who have experienced serious trouble and inconvenience from relying, on that basis, on the existence of an 'extraordinary circumstance'.

46 In that regard, it must be recalled 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 the regulation provides. Such compensation may accordingly reduce or even remove the financial burden borne by carriers in consequence of those obligations (judgment in *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraph 68 and the case-law cited).

47 It cannot be excluded at the outset that Article 13 of Regulation No 261/2004 may be relied on and applied with respect to a manufacturer which is at fault, in order to reduced or remove the financial burden born by the air carrier as a result of its obligations arising from that regulation.

48 In so far as a technical problem, such as that at issue in the main proceedings, does not fall within the definition of 'extraordinary circumstance', there is no need to give a ruling on the reasonable measures that the air carrier should have taken to deal with the situation, pursuant to Article 5(3) of Regulation No 261/2004.

49 Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that a technical problem, such as that at issue in the main proceedings, which occurred unexpectedly, which is not attributable to poor maintenance and which was also not detected during routine maintenance checks, does not fall within the definition of 'extraordinary circumstances' within the meaning of that provision.

Costs

50 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 (Ninth 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 technical problem, such as that at issue in the main proceedings, which occurred unexpectedly, which is not attributable to poor maintenance and which was also not detected during routine maintenance checks, does not fall within the definition of 'extraordinary circumstances' within the meaning of that provision.

[Signatures]