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Judgment of the Court in Joined Cases C-156/22 to C-158/22 | TAP Portugal (Death of the co-pilot)

### **The cancellation of a flight due to the unexpected death of the co-pilot does not exempt the airline from its obligation to compensate passengers**

*Such a death, whilst tragic, does not amount to an 'extraordinary circumstance' but is, like any unexpected illness which may affect a crew member whose presence is essential, inherent in the normal exercise of the activity of the airline*

On 17 July 2019, TAP Portugal was to operate a flight at 6.05 from Stuttgart (Germany) to Lisbon (Portugal). On the same day, at 4.15, the co-pilot of the flight in question was found dead in his hotel bed. Shocked by that event, the whole crew declared itself unfit to fly so that the flight was cancelled. A replacement crew left Lisbon at 11.25 and arrived in Stuttgart at 15.20. Next, the passengers were transported to Lisbon on a replacement flight scheduled at 16.40.

Certain passengers of the cancelled flight assigned their rights arising from that cancellation to companies which provide legal assistance to air passengers. TAP refused to pay those companies the compensation provided for in the Air Passengers Rights Regulation,<sup>1</sup> claiming that the unexpected death of the co-pilot was an extraordinary circumstance which exempts the air carrier from its obligation to pay compensation.

The Stuttgart Regional Court, before which the case was brought, asks the Court of Justice to interpret the Regulation.

By today's judgment, the Court recalls that **measures relating to the staff of the operating air carrier, such as those concerning crew planning and staff working hours, fall within the normal exercise of that carrier's activities**. Since the management of **an unexpected absence, due to illness or death**, of one or more members of staff whose presence is essential to the operation of a flight, including shortly before the departure of that flight, is intrinsically linked to the question of crew planning and staff working hours, such an absence **is inherent in the normal exercise of the operating air carrier's activity and therefore does not fall within the concept of 'extraordinary circumstances'**. It follows that the air carrier is not exempted from its obligation to compensate passengers.

The Court points out that, however tragic and final it may be, the situation of an unexpected death is no different, from a legal point of view, from that in which a flight cannot be operated when such a member of staff has unexpectedly fallen ill shortly before the departure of the flight. Thus, **it is the very absence and not the specific medical cause of that absence which constitutes an event inherent in the normal exercise of that carrier's activity, with the result that the carrier must expect such unforeseen events to arise in the context of**

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<sup>1</sup> 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).

### **planning its crews and the working hours of its staff.**

The Court adds that the fact that the crew member concerned had fully completed the regular medical examinations prescribed by the applicable legislation cannot call into question that conclusion since any person may, at any time, unexpectedly fall ill or die.

**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 European Union law or the validity of a European Union 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.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎(+352) 4303 3355

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