



The "Unruly Passenger" Phenomenon

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European Union | November 7 2024

1. Flight disruption due to unruly passenger behavior as "extraordinary circumstances"

The significant increase -post pandemic- of unruly passenger incidents both in-flight and on the ground has worried airlines, courts and lawmakers, as the need to regulate this kind of behavior and the subsequent flight disruptions has heightened. The question on whether unruly passenger incidents should be characterized as "extraordinary circumstances" and, as a result, fall within the scope of art. 5 par. 3 of EU 261/2004, exempting the air-carrier's responsibility, in case of flight disruption due to unruly passenger behavior, has been dealt with by the CJEU in the case of **LE -v- Transport Aéreos Portugueses SA**.

According to settled case-law of the Court of Justice of the European Union, the abovementioned provision of art. 5 par. 3 of EU 261/2004 should be interpreted in the light of recital 14 of Regulation 261/2004, according to which: "*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.*" Namely, in order for events to be classified as 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 the following conditions must be cumulatively met,

- (a) the events must not be, by their nature or origin, inherent in the normal exercise of the activity of the air carrier concerned and
- (b) must also be outside that carrier's actual control.

2. CJEU Case Law on the subject matter

With case C-74/19, the CJEU was faced with the question whether the behavior of an unruly passenger could be characterized as an extraordinary circumstance, releasing thus the air-carrier from the obligation to pay the compensation of art. 7 of EU 261/2004 in case of flight disruption. In the case in question, the pilot in command of the aircraft diverted the flight concerned to an airport other than the airport of arrival in order to disembark a disruptive passenger and his baggages. As a result, the flight reached the arrival (Lisbon) airport with a delay, causing the complaining passenger to miss his connecting flight (operated by the same air-carrier) to Norway and to finally arrive at his final destination with an almost 24-hour delay. When the claimant requested the standard compensation provided for in article 7 of EU 261/2004 for a delay of more than three hours, TAP S.A. refused to pay the claimed compensation, on the basis that the delay was caused by extraordinary circumstances. With regard to the air-carrier's claim, the CJEU concluded that, depending on the circumstances, the disruptive behavior of a passenger may fall under the term "extraordinary circumstance" within the meaning of article 5 par. 3 of Regulation 261/2004. More specifically, according to the Court's reasoning, "*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*".

It may still be left, however, to the national courts' discretion to determine whether the air carrier had been diligent and had taken all appropriate measures, in order to prevent such behavior, without significant consequences for the execution of the flight in question. The due diligence of the air-carrier, in the sense that the air-carrier has executed its obligations in accordance with good commercial practices and has not somehow contributed to the occurrence of the unruly behaviour, constitutes a necessary condition for characterizing the disruption caused by an unruly passenger as an extraordinary event. The CJEU specifically mentions the air-carrier's responsibility to take appropriate measures at a time when it is able to do so without any significant consequence for the operation of the flight, in order to avoid in-flight disruptions. Therefore, the boarding of a passenger who is already exhibiting warning signs of such behaviour during boarding may be deemed by the national courts as negligent conduct by the air carrier.

3. Conclusion

Following the Court's reasoning, the International Air Transport Association (IATA), in a series of instructions to air carriers regarding the ever-intensifying problem of unruly passengers, has indicated the importance of awareness on the handlers' and the airport staff's part, as one of the main methods of preventing on the ground disruptive behaviour that may escalate in-flight. In order, therefore, to avoid the

escalation of a disruptive and potentially dangerous situation in the air, where dealing with such situations is inherently more difficult, the air carriers may need to resort to denial of boarding to passengers exhibiting disruptive behavior on the ground, as a means of securing the uninterrupted operation of the flight.

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