



**C-549/07 Wallentin-Hermann v Alitalia, judgment of 22 December 2008**

**The Court analyses the scope of air passengers' rights in the event of the cancellation of their flight.**

Mrs Wallentin-Hermann and two other passengers were informed a mere five minutes before the scheduled departure time that their Alitalia flight had been cancelled owing to a complex engine defect affecting the turbine. Alitalia had, however, been aware of that problem since the night preceding that flight.

Regulation (EC) 261/2004 on the compensation and assistance of air passengers provides that, in the event of the cancellation of a flight, the passengers affected have the right to compensation from the air carrier unless they are informed of the flight's cancellation in good time. However, an air carrier is not obliged to pay such compensation 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.

Mrs Wallentin-Hermann requested compensation under that regulation. Following Alitalia's refusal, she brought an action before the *Bezirksgericht für Handelssachen Wien* [District Commercial Court, Vienna] which upheld her application for compensation. Alitalia lodged an appeal before the *Handelsgericht Wien* [Commercial Court, Vienna], which referred questions to the Court of Justice on the abovementioned regulation, *inter alia* to establish whether a technical defect affecting an aircraft which results in the cancellation of the flight is covered by the term "extraordinary circumstances" within the meaning of Article 5(3) of that regulation.

The Court stated that "extraordinary circumstances" may be regarded as covering only circumstances which are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond the actual control of that carrier on account of its nature or origin. The Court pointed out that air carriers are confronted as a matter of course in the exercise of their activity with various technical problems to which the operation of those aircraft inevitably gives rise. The resolution of a technical problem which comes to light during aircraft maintenance or is caused by failure to maintain an aircraft must therefore be regarded as inherent in the normal exercise of an air carrier's activity and cannot therefore constitute as such an "extraordinary circumstance" within the meaning of Article 5(3) of the Regulation.

The Court added that the Community legislature intended to confer exemption from the obligation to pay compensation to passengers in the event of flight cancellations not in respect of all extraordinary circumstances, but only in respect of those which could not have been avoided even if all reasonable measures had been taken. It follows that the onus is on the party seeking to rely on them to establish that, even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal, it would clearly not have been able – unless it had made intolerable sacrifices – to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight. The fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken all reasonable measures to relieve that carrier of its obligation to pay compensation.