

# The relevance of the EU Charter for criminal and *civil* lawyers

Practical exercise – civil case study

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## Legal Framework

Regulation No 261/2004

Recitals 1 and 14:

(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.

...

(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.

Article 5 (headed 'Cancellation'):

'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, unless:

(i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

(ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

...

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.

...'

Article 7 (headed 'Right to compensation'), provides in paragraph 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).

...'

## **Facts**

Ms Alberta Brown had booked a seat on a flight from Lisbon to Prague. That flight, which was to be operated by ABC Airlines ('ABC') on 29 February 2020, was cancelled on the day of the flight because of a strike by its pilots ('the strike at issue').

In the summer of 2019 the workers' organisations representing ABC pilots ('the pilots' trade unions') decided to terminate the collective agreement concluded with ABC, which was, in the normal course of events, to cover the period 2018-2021. Negotiations with a view to concluding a new collective agreement began in December 2019.

Since the pilots' trade unions took the view that those negotiations had failed or, at the very least, had not progressed sufficiently, they called on their members to strike. The strike at issue thus began on 26 February 2020 and continued until 3 March 2020. It therefore resulted in ABC cancelling more than 2 000 flights. The strike thus affected approximately 200 000 passengers, including Ms Brown.

On 3 March 2020 a new three-year collective agreement was concluded, which is therefore intended to apply until 2023.

Ms Brown brought proceedings before the District Court for Prague 6, claiming that it should order ABC to pay it the compensation of EUR 400 provided for in Article 5(1)(c) of Regulation No 261/2004, read in conjunction with Article 7(1)(b) thereof.

ABC submits that it was not required to pay the compensation claimed as the strike at issue constitutes an extraordinary circumstance which could not have been avoided even if all reasonable measures had been taken, having regard to the exorbitant nature of the demands for a salary increase made by the pilots' trade unions. It contends that the strike at issue is an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation No 261/2004, since it is not inherent in the normal exercise of its activity and is beyond its actual control.

Ms Brown disputes the fact that the strike at issue constitutes an 'extraordinary circumstance' within the meaning of Article 5(3) of Regulation No 261/2004.

**Questions:**

- Which fundamental rights laid down in the EU Charter might be relevant for the national court deciding in Ms Brown's case?
- Knowing that according to relevant CJEU's 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, which argumentation, based on the EU Charter, should Ms Brown use in order to win her case?
- Which articles of the EU Charter might be relevant for ABC in order to avoid paying the compensation claimed by Ms Brown? Please prepare ABC's argumentation.
- How could, in the present case, a balance be struck between the opposing interests protected by the fundamental rights laid down in the EU Charter?
- How should the national court interpret relevant provisions of Regulation No 261/2004 in light of the fundamental rights protected by the EU Charter?