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TUESDAY, 17 APRIL 2018

Joined cases Krüsemann - the Court disagrees with AG Tanchev

Dear readers,
it feels like yesterday - and indeed it was just a couple of days ago! - that we were discussing the [Advocate General's opinion](#) in the joint cases concerning "wildcat" strikes at Tuifly. With incredible speed, the judgment was published *today*.

The main question addressed in the opinion, and also the only question discussed in the judgment, is whether strikes of an airline's own personnel - and in particular *informal* strikes such as that at stake in the case before the Court - represented extraordinary circumstances within the meaning of the Passenger Rights Regulation. If you had read my previous post, you will know how much as a surprise the AG's opinion had come to me (and a few of my senior co-teachers in consumer and contract law to be honest!).

Luckily, reading the [Court's decision](#), it seems we will not have to change our teaching after all!

The decision, clearly excludes strikes arising from conflicts internal to the airline from the remit of "extraordinary circumstances"- including, for sound legal reasons, wildcat strikes.

As to strikes in general, the Court observes that extraordinary circumstances have to meet two cumulative conditions: they must not be inherent to the normal exercise of the carrier's activity and they must not be within the carrier's sphere of control [para 32].

In the situation under consideration, according to the Court, it is clear that the strike action followed the unexpected announcement, by the company, of a restructuring plan. As the Commission had apparently submitted, the Court considers restructuring to be a normal component of the exercise of economic activity [para 38-40]. To the extent that conciliatory actions on the side of the company were effectively able to stop the strike after a few days, the Court also considers the strike not to fall outside Tuifly's sphere of control [para 43-45].

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With reference to the possibility of differentiating between "regular" and "wildcat" strikes, the Court raises one important point: namely, a differentiation based on what is legal and illegal industrial action in the country where the dispute originates would make passenger rights dependent on national law and give rise to discrepancies in consumer protection - something that the Regulation by its own nature seeks to eliminate [para 47].

Thus, the CJEU concludes, wildcat strikes following the announcement of a restructuring decision cannot fall within the notion of extraordinary circumstances outlined in the Passenger Rights Regulation.

Sorry, AG Tachev, better luck next time!

Posted by [Candida Leone](#) at 22:03     

Labels: [extraordinary circumstances](#), [passenger rights](#), [Regulation 261/2004](#)

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