The EU's Air Passenger Rights Regulation 261/2004 and case law

1. The applicable regulation regarding to air passenger rights is:
   - The EU's Air Passenger Rights Regulation 261/2004. This regulation came into force in February 2005 establishing minimum levels of assistance and compensation for passengers denied boarding or affected by long delays or cancellations.
   - This regulation will be amended in the future.

2. Ruling case law from the European Court of Justice (the Court) in reference to technical problems, which can or cannot be considered as an extraordinary circumstance based on, article 5 of the European regulation nr. 261/2004.
   - C- 402/07 and C- 432/07 Sturgeon v Condor Flugdienst GmbH and Böck and Lepuschitz v Air France, judgments of 19 November 2009
     The Court rules that air carriers are obliged to compensate their customers in the event of significant delay in flights.

Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation of flight provides in particular for the obligation for air carriers to compensate passengers, in the event of cancellation of a flight followed by arrival at destination by a replacement flight with a delay of more than three hours. Air carriers can escape this obligation only by relying on the existence of "extraordinary circumstances". However, Regulation (EC) No 261/2004 does not provide explicitly for the same obligation to compensate in the case of the flight merely being delayed.

The origin of these two joined cases is the action by passengers against their air carriers on the grounds of substantial delays in their flights (25 hours in one case
and nearly 22 hours in the other). The courts before which these actions have been brought referred the question to the Court of Justice in particular of whether very long flight delays can be assimilated to flight cancellations giving rise to compensation for passengers.

The Court firstly specifies that a delayed flight cannot be considered to have been cancelled, irrespective of the length of this delay, when, apart from the scheduled departure time, all the other elements of the flight, including the itinerary, remain unchanged.

Nevertheless, the Court recognizes the same right to the same compensation for passengers of flights delayed by more than three hours as that explicitly provided for passengers of cancelled flights. On the one hand, the Court bases this conclusion on the recitals of the Regulation, in which the legislature links the question of compensation to that of a long delay, whilst indicating that the Regulation seeks to ensure a high level of protection for passengers regardless of whether they are denied boarding or whether their flight is cancelled or delayed. On the other hand, the Court interprets the relevant provisions of the Regulation in the light of the general principle of equal treatment. According to the Court, the situation of passengers who have reached their destination with a delay of more than three hours as a result of a cancellation or a mere delay of their flight is comparable from the point of view of damage suffered. Consequently, both categories of passengers must be able to benefit from an equivalent right to compensation.

Finally, the Court recalls that, although air carriers can be exempt from their obligation to compensate their customers in the event of “extraordinary circumstances”, a technical problem in an aircraft is not covered by that concept unless that problem stems from events which are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control.

- **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 the European regulation. Following Alitalia’s refusal, she brought an action before the Bezirksgericht fur 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.

3. Ruling Dutch case law in reference to technical problems, which cannot be considered as an extraordinary circumstance based on article 5 of the European regulation nr. 261/2004.

- The first case is from the court in Noord-Holland, April 23, 2013.
  
  The Facts:
  In this case passengers summoned Arkefly on August 13, 2012 due to the fact that passengers had a delay of 15 hours when they wanted to fly from Amsterdam to Kos on the first of September 2011. The passengers claimed a compensation of €800,-. However Arkefly refused to pay this amount.

  The passengers based there case on the European regulation nr. 261/2004 and the Sturgeon case of November 19, 2009. They claimed that Arkefly has to pay a compensation amount of €400,- to each passenger due to the delay, based on article 7 of the European regulation.

  In refusing to reimburse, Arkefly argues that she is not obligated to pay any compensation because the delay is due to extraordinary circumstances which, in despite of taking every reasonable measures, could not have been prevented. Arkefly also mentioned that the plane which is the issue already had a technical problem in the prior flight. Arkefly immediately enabled technical help to maintain the problem. Subsequently there has been a Maintenance Service Check. This check found the plane “flight worthy” and the plane was released for departure.

  However during the flight the weather radar broke. Due to bad weather the plane was forced to return to the airport, Schiphol. This, because the defect was a direct safety hazard. Right after Arkefly enabled another airplane, the plane had to be
prepared, inspected and also “released to service”. The baggage had to be carried to
the new plane and also they had to get a new time for departure. Due to this
mechanical defect the plane was delayed for more than three hours. However
Arkefly argues that the defect on the weather radar could not reasonably be avoided.
That is why they could not have any influence on the technical defect and a defect
such as this is not inherent to the normal exercise of the activities of the air carrier.
Arkefly strictly followed the maintenance program.

The extrajudicial costs should be denied because the passengers did not
substantiate these costs.

**Decision of the Court (Rechtbank Noord-Holland)**
The Sturgeon case is leading case law in this case. Based on this case, passengers,
also with delays, have the right of compensation unless there are extraordinary
circumstances which are explained in Paragraph 14 of the EU's Air Passenger

In reference to the appeal of Arkefly on extraordinary circumstances the judge
considers the following:
In the preamble of the EU's Air Passenger Rights Regulation 261/2004 the legislator
points out that extraordinary circumstances arise in cases such as political instability,
weather circumstances which prevent flights, security problems, unforeseen security
problems and strikes affecting the effectuation of the flight.

However not all the extraordinary circumstances lead to exemption of the obligation
of compensation. The air carrier has to state and prove that these circumstances
could not have been prevented by taking every measure necessary which at the time
of the extraordinary circumstances satisfy the technical and economical conditions of
the air carrier. It has to be a circumstance which the air carrier could not have any
actual influence on.

Court refers to Wallentin case: Technical problem possibly extraordinary
circumstances
The European Court in the Wallentin Herman case further completed what can be
seen as “extraordinary circumstances”. The Court decided that a technical problem
could be seen as an extraordinary circumstance. Although the Court stated that
*technical problems* may be regarded as extraordinary circumstances – based on
art. 5 (3) of the Regulation – only when the technical problems relate to an event which is not inherent to 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 considered, in par. 24 and par. 25, which technical problems are inherent to the normal exercise of the activity of the air carrier. It concerns technical problems which are discovered during the maintenance of the airplane or which are the result of the imperfections of the maintenance. These technical problems do not qualify as extraordinary circumstances based on article 5 (3) of the EU's Air Passenger Rights Regulation 261/2004.

Arkelfy argued that the air carrier can conclude that an airplane can normally function and that no part of the plane will have an unforeseen defect when there has been a regular maintenance program. An unforeseen defect which occurs during the flight, such as breaking of a weather radar, is exceptional but not preventable. Arkelfy could not prevent this mechanical problem and that is why they have the opinion that there is an extraordinary circumstance.

The passengers, however claim that the reasoning of Arkelfy is against article 5 (3) of the EU's Air Passenger Rights Regulation 261/2004, the Wallentin Hermann case, the Sturgeon case, the Eglitis case and the Nelson case. Technical problems are inherent to the normal exercise of the activity of the air carrier. A plane exists out of a lot of parts and it is a fact that these parts can break. It does not concern the fact if Arkelfy could have prevented the technical problem which caused the delay. First it has to be considered if there is an extraordinary circumstance and if so, the court first has to assess whether these circumstances could have been prevented. The fact that technical problems can occur is for the risk of Arkelfy., the passengers argue.

The judge rejects the defense of Arkelfy. This because the European Court in the Wallentin Herman case decided that problems which are determined during maintenance of the airplane or which are the result of errors of the maintenance are no extraordinary circumstances as mentioned in article 5 lid 3 of the Regulation.

The judge further considered that the Court in the Wallentin Herman case did not mention which technical problems are not inherent to the normal exercise of the activity of the air carrier and which technical problems are beyond the actual control
of that carrier. The judge determines that you cannot conclude from par. 25 that problems which not occur during maintenance or which are not due to errors at a maintenance service could be considered as an extraordinary circumstance. In par. 26 of the Wallentin judgement the European Court only refers to the fact that technical problems could be extraordinary circumstances. Also the Court gives examples of when this should be the case, namely when there is a manufacturing defect or airplanes which were damaged by sabotage or terrorism.

Paying attention to (a) par. 26 of the Wallentin Herman arrest “could not be ruled out”, (b) the nature of the examples which are given by the court in coherency with (c) the purpose of the Regulation (high class protection of consumers), the Court rules that in general a technical problem, which occurs after the plane is “released to service” in principle should be considered as inherent to the normal exercise of the activity of the air carrier and thus should not be considered as an extraordinary circumstance. The fact that the weather radar broke during the flight should not be considered as an extraordinary circumstance. Therefore the judge does not gives his judgment concerning the question if Arkefly could have prevented this circumstance.

That is why the claim of the passengers will be awarded.

- The second case is also from the court in Noord-Holland, February 2, 2013.
  The Facts:
  In this case passengers had a delay of 3 hours and 55 minutes on their planned flight from Amsterdam to Antalya on the 23th of October 2010. As a result, the passengers claim a compensation of €2400,- for their delay. Transavia refuses to pay this amount. “.
  After the plane left the fuse (“zekering”) of the left wing and engine anti ice system came loose.

The decision of the court complies with the decision of the same court in the case of Arkefly.
The passengers base their case on the European regulation nr. 261/2004 and the Sturgeon case of November 19, 2009. They claim that Transavia has to pay a compensation amount of €400,- for each passenger due to the delay, based on article 7 of the European regulation.
In refusing to reimburse, Transavia argues that she is not obligated to pay any compensation because it is a delay. Subsequently Transavia says that she is not obligated to pay any compensation because the delay is due to extraordinary circumstances which, in despite of taking every reasonable measures, could not have been prevented. Transavia argues that the plane which is in dispute was “flight worthy” and was “released to service”. After the plane left the fuse (“zekering”) of the left wing and engine anti ice system came loose. Because the defect was a safety hazard, the plane returned to the gate. As a consequence Transavia argued that this is a case of an unforeseen safety hazard which Transavia could not have prevented.

Decision
The Sturgeon case is leading case law in this case. Based on this case, passengers, also with delays, have the right of compensation unless there are extraordinary circumstances which are explained in Paragraph 14 of the EU's Air Passenger Rights Regulation 261/2004.

In reference to the appeal of Transavia on extraordinary circumstances the judge considers the following:
In the preamble of the EU's Air Passenger Rights Regulation 261/2004 the legislature points out that extraordinary circumstances arise in cases such as political instability, weather circumstances which prevent flights, security problems, unforeseen security problems and strikes affecting the effectuation of the flight.

However not all the extraordinary circumstances lead to exemption of the obligation of compensation. The air carrier has to state and prove that these circumstances could not have been prevented by taking every measure necessary which at the time of the extraordinary circumstances which satisfy the technical and economical conditions of the air carrier. It has to be a circumstance which the air carrier could not have any actual influence on.

The European court in the Wallentin Herman case further completed what can be seen as “extraordinary circumstances”. The court decided that a technical problem could be seen as an extraordinary circumstance. Although the court stated that “technical problems” may be regarded as extraordinary circumstances – based on art. 5 (3) of the Regulation – only when the technical problems relate to an event which is not inherent to 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 European Court considered, in par. 24 and par. 25, which technical problems are inherent to the normal exercise of the activity of the air carrier. It concerns technical problems which are discovered during the maintenance of the airplane or which are the result of the imperfections of the maintenance. These technical problems do not qualify as extraordinary circumstances based on article 5 (3) of the EU’s Air Passenger Rights Regulation 261/2004.

Transavia wrongfully punished?
Transavia argued that she will be wrongfully punished when she has to pay the compensation amount to the passengers whose flight had a delay of more than three hours because of a technical problem which arose after released to service. These defects are, according to Transavia, not inherent to 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. To support their argument Transavia refers to the cases of the Inspection Living Environment and Transport and the Disputes Commission Aviation.

The passengers, however claim that the reasoning of Transavia is against article 5 (3) of the EU’s Air Passenger Rights Regulation 261/2004, the Wallentin Hermann case, the Sturgeon case, the Eglitis case and the Nelson case. Technical problems are inherent to the normal exercise of the activity of the air carrier. A plane exists out of a lot of parts and it is a fact that these parts can break. It doesn’t concern the fact if Transavia could have prevented the technical problem which caused the delay. First it has to be considered if there is an extraordinary circumstance and if so, the court first has to assess whether these circumstances could have been prevented. The fact that technical problems can occur is the risk of Transavia.

The judge rejects also in this case the defense of Transavia. This because the court in the Wallentin Herman case decided that problems which are determined during maintenance of the airplane or which are the result of errors of the maintenance are no extraordinary circumstances as mentioned in article 5 lid 3 of the Regulation.

The judge further considered that the court in the Wallentin Herman case did not mention which technical problems are not inherent to the normal exercise of the activity of the air carrier and which technical problems are beyond the actual control of that carrier. The judge determines that you cannot conclude from par. 25 that
problems which not occur during maintenance or which are not due to errors at a maintenance service could be considered as an extraordinary circumstance. In par. 26 the European Court only refers to the fact that technical problems could be extraordinary circumstances. Also the European court gives examples of when this should be the case, namely when there is a **manufacturing defect or airplanes which were damaged by sabotage or terrorism.**

Paying attention to (a) par. 26 of the Wallentin Herman arrest “could not be ruled out”, (b) the nature of the examples which are given by the court in coherency with (c) the purpose of the Regulation (high class protection of consumers), the court rules that in general a technical problem, which occurs after the plane is “released to service” in principle should be considered as inherent to the normal exercise of the activity of the air carrier and thus should not be considered as an extraordinary circumstance. Therefore the judge does not gives its judgment concerning the question if Transavia could have prevented this circumstance. **The fact that the Inspection Living Environment and Transport and the Disputes Commission Aviation have different opinions in their rulings does not make any difference here.**

That is why the claim of the passengers were awarded.

- **The third case is also from the court in Noord-Holland, September 3, 2013.**

  **The Facts:**

  In this case one passenger had a delay of 4 hours when he wanted to fly from Nice to Amsterdam on the 13th of April 2011. As a result, the passenger claimed a compensation of €250,- for his delay. Transavia refused to pay this amount. Transavia argued that the plane which is in dispute was flight worthy and was “released to service”. **After the plane left the right “wing body overheat” warning light started to burn. This warning indicates that there is a leakage in the bleed air system. If there is such a leakage the plane cannot operate in “icing conditions”. Because of the flight safety the plane turned back to the gate for an inspection by local technicians. That inspection caused the delay. Eventually the plane left under the conditions that it was limited in its flying heights. This resulted in a delay.**

  The passenger based his case on the European regulation nr. 261/2004 and the Sturgeon case of November 19, 2009. He claims that Transavia has to pay a compensation amount of €250,- due to the delay, based on article 7 of the European
In refusing to reimburse, Transavia argues that she is not obligated to pay any compensation because the delay is due to extraordinary circumstances which, in despite of taking every reasonable measures, could not have been prevented. Transavia argues that the plane which is in dispute was flight worthy and was “released to service”. After the plane left the right “wing body overheat” warning light started to burn. This warning indicates that there is a leakage in the bleed air system. If there is such a leakage the plane cannot operate in “icing conditions”. Because of the flight safety the plane turned back to the gate for an inspection by local technicians. That inspection caused the delay. Eventually the plane left under the conditions that it was limited in its flying heights. This resulted in a delay. That is why there is a case of safety hazards which Transavia could not have prevented.

Transavia calls upon the proposition of the European Commission.
The judge refused to anticipate.
With respect to “extraordinary circumstances” Transavia refers to the proposition of the European Commission of March 13, 2013 for the amendment of the European regulation. Transavia suggested that the proposition is a codification of the case law of the European court. The proposition includes a definition of “extraordinary circumstances”. In reference to technical problems the circumstances which are extraordinary are; “technical problems which are not inherent to the normal operation of the aircraft, such as identification of a defect during the flight operation concerned and which prevents the normal continuation of the operation; or a hidden manufacturing defect revealed by the manufacturer or a competent authority and which impinges on flight safety”. Not extraordinary are technical problems which arise out of pre-flight check. Because Transavia argues that the proposition is a codification of the case law of the European court, should also in the underlying case be reviewed if the technical problem arose after the pre-flight check. If that is the case, then the technical problem qualifies as an extraordinary circumstance and then the judge has to look at the fact if Transavia took every reasonable measures to prevent the technical problem.

At the same time Transavia appeals on the list of the 27 cooperative national supervisors in Europe (NEB-List). According to Transavia the European Commission gave the instruction to the national supervisors to draft this list to encourage the harmonization of the enforcement practice inside Europe. Also the Dutch supervisor,
the Inspection Living Environment and Transport, rules conform the NEB-list. Transavia argues that the principles of equal treatment infer that this list also has to be considered by the national judge. On the NEB-list there are 30 specified categories of incidents which could be considered as an extraordinary circumstance. Transavia argues that in this case there is an extraordinary circumstance as mentioned in category 22 and 25 of the NEB-list.

**Decision**

The Sturgeon case is leading case law in this case. Based on this case, passengers, also with delays, have the right of compensation unless there are extraordinary circumstances which are explained in Paragraph 14 of the EU’s Air Passenger Rights Regulation 261/2004.

Transavia refers to the proposition and the NEB-list.

However the judge will not consider the proposition because it is only a proposition and there is no guarantee that this will be the definite text.

In reference to the NEB-list the judge also refuses to consider it because the NEB-list is a policy of an administrative authority. That is why the judge will give its ruling based on the European case law and the European regulation 261/2004.

The Wallentin Hermann case will be leading case law here. The judge does not see any occasion to review the interpretation of this case, such as already has taken place in the case of February 7, 2013.

The court in the Wallentin Herman case decided that problems which are determined during maintenance of the airplane or which are the result of errors of the maintenance, are inherent to the normal exercise of the activity of the air carrier and are no extraordinary circumstances as mentioned in article 5 lid 3 of the Regulation.

However the European court in the Wallentin Herman case did not mention which technical problems are not inherent to the normal exercise of the activity of the air carrier and which technical problems are beyond the actual control of that carrier. The judge determines that you cannot infer from par. 25 that
problems which not occur during maintenance or which are not due to errors at a maintenance service could be considered as an extraordinary circumstance. In par. 26 the court only refers to the fact that technical problems could be extraordinary circumstances. Also the court gives examples of when this should be the case, namely when there is a manufacturing defect or airplanes which were damaged by sabotage or terrorism.

Paying attention to (a) par. 26 of the Wallentin Herman arrest “could not be ruled out”, (b) the nature of the examples which are given by the court in coherency with (c) the purpose of the Regulation (high class protection of consumers), the court rules that in general a technical problem, which occurs after the plane is “released to service” in principle should be considered as inherent to the normal exercise of the activity of the air carrier and thus should not be considered as an extraordinary circumstance. Therefore the judge does not gives its judgment concerning the question if Transavia could have prevented this circumstance.

That is why the claim of the passenger was awarded.

- **The fourth case is from the court in the Hague, from July 17th, 2013**

  The facts:
  During the pre-flight inspection was established that one of the tyres of the main landing gear was damaged; a big cut was seen. Transavia claimed that a tyre cannot be damaged like this by a hard landing. The Court ruled that not is established that the damage on the tyre is not inherent on the exercise of the normal activities of Transavia. The appeal of Transavia on extraordinary circumstances was denied.

- **Based on the above Dutch case law we can conclude that the Dutch judges formulated a starting point. I mean that in the above case law the judge rules that in general a technical problem, which occurs after the plane is “released to service” in principle should be considered as inherent to the normal exercise of the activity of the air carrier and thus should not be considered as an extraordinary circumstance.**

4. **Different Dutch case law**
• However there is also case law in the Netherlands in which is ruled differently. For example the following:

• The case in the Court of Noord-Holland from June 26, 2012.
  Facts:
  In this case there was a technical problem which occurred during the moment of starting the engine and thus after the plane was “released to service”. There was a problem with the gear.

  Arkefly argued that the technical problem could not have been prevented and that the plane had valid proof of being “flight worthy” and was being well taken care of accordance to an approved “maintenance manual”.

  Decision:
  The judge ruled that the technical problem occurred after the plane was taken “off blocks” (and released to service). At that moment an unexpected security hazard occurred which caused the delay.

  Arkefly had argued that the plane had always been taking good care of, that the gear has been regularly checked on and that the defect rarely occurs. That is why, from an air carrier you cannot expect to substitute an substantial part, any different than is defined in the maintenance manuals. If a part of the plane, after this check, has a defect which brings a safety hazard for continuing the flight, should be considered as an extraordinary circumstance.

  The judge ruled that in this case there is a technical problem which can be considered as an “extraordinary circumstance”. This, because the plane was well taken care of, the part which was the problem was checked regularly, and because this defect is rare.

• The case of the court of Noord-Holland from January 25, 2012.
  Facts:
  In this case there was a technical problem which occurred during the flight. As a result the plane has to return to Schiphol, Amsterdam, because of a problem with the “stabilizer out of trim light”.

  The question was whether this technical problem should be considered as an extraordinary circumstance, what the air carrier claimed.
The air carrier argued the technical problem occurred after taking off and that the technical problem could not have been prevented.

**Decision:**
The judge ruled that the delay was caused due to a problem with the “stabilizer out of trim light and that this was an unforeseen safety hazard because the problem occurred after take-off. There was no proof that the technical problem could have been prevented by taking different measures then prescribed in the maintenance manual.

In this case the judge ruled that there is a technical problem which can be considered as an “extraordinary circumstance”. This is based on 1) that the problem occurred after take-off and 2) that there was no proof that the technical problem could have been prevented by taking different measures then prescribed in the maintenance manual.

5. Literature

The opinions of Prof. mr. R.P.J.L. Tjitted en mr. M.P.A.J. Dings in the article; “Compensation of travelers also with an unforeseen technical problem?”, are that by answering the question if there is a technical problem which can be considered as an “extraordinary circumstance” within the meaning of the European Regulation, in principle should be answered by looking at the fact if an air carrier could have any influence on the technical problem in connection with the normal exercise of the activity of the air carrier and its nature or origin.

6. **CONCLUSION**

As a conclusion we can determine that Dutch court rulings are inconsistent. The Dutch judges are struggling with the question if technical problems, which arise after the plane is “released to service” and where the technical problems were not discovered during the maintenance or which are not discovered due to incomplete or bad maintenance checkups, could be qualified as extraordinary circumstances. Therefore the passenger of a canceled or delayed flight does not (always) have a right of compensation.
However in most cases the judges comply with the Sturgeon case of the European court that in general a technical problem, which occurs after the plane is “released to service” in principle should be considered as inherent to the normal exercise of the activity of the air carrier and thus should not be considered as an extraordinary circumstance. That is why compensation should be paid to passengers.

Amsterdam, 22-10-2013,

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