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Plane damaged by bird strike may result in compensation to passengers

An Airbus 321 travelling from Russia to Crimea has crash-landed in a field as a result of damage caused by a flock of birds that were sucked into the plane's engines. Although there were no deaths caused by the impact, some passengers experienced injuries, and all suffered significant delays. As a result of this the passengers may be able to make a claim under the Montreal Convention 1999 (the 'Convention') for a non-EU flight.

Article 19 of the Convention states that "the carrier is liable for damage occasioned in the carriage by air of passengers, baggage or cargo" however, the carrier will not be liable if "it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures."

A bird strike is considered an extraordinary circumstance in EU law in relation to EU 261/2004 as per Marcela Pešková, Jirí Peška -v- Travel Service A.S. (C-315/15). Considering this judgment it would be unlikely that a view would be taken that the damage caused by a bird strike could be avoided or any further precautionary measures could be taken. As such, the passengers are unlikely to be able to recover for their delay.

Those injured may make a claim for compensation. Article 17 s(1) of the Convention states that "the carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft". Any passengers who were onboard the aircraft at the time of the accident would therefore meet this requirement. Once a claim under this Article has been established Article 21 is considered.

Under Article 21 s(1) of the Convention, for damages arising under Article 17, the carrier may limit its liability to 100,000 Special Drawing Rights provided there was no negligence, wrongful act or omission of the carrier or its servants or agents; or if the damage was solely due to the negligence or other wrongful act or omission of a third party. At the time of publication of this article this would limit a carrier's liability to around £113,000 per person in this event.