

# APPLICATION OF REGULATION 1177/2010 IN CROATIA – WHAT MORE CAN BE DONE FOR PASSENGERS WITH DISABILITIES AND PASSENGERS WITH REDUCED MOBILITY?

Full Professor PETRA AMIŽIĆ JELOVČIĆ, PhD\*  
Full Professor DRAGAN BOLANČA, PhD\*\*

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*Persons with disabilities and persons with reduced mobility face discrimination every day. Although great effort has been made during the last decade towards improving their position, there is still room for progress. The European Union (EU) adopted Regulation 392/2009 and Regulation 1177/2010 in order to enhance the protection and rights of passengers while in transport by sea. Regulation 392/2009 incorporates the relevant provisions of the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea 1974. It also contains some additional provisions aiming to obtain complete uniformity within the EU as well as to ensure suitable protection for passengers. Regulation 1177/2010, on the other hand, establishes rules for sea and inland waterway transport whose main goal is to achieve the non-discrimination of passengers with regard to transport conditions offered by carriers and non-discrimination and assistance for persons with disabilities and persons with reduced mobility. By passing these acts, the EU has provided comprehensive protection for passengers in carriage by sea, giving special consideration to persons with disabilities. The Republic of Croatia has harmonised Croatian legislation on the maritime carriage of passengers with Regulation 392/2009 by amending its Maritime Code in 2013, while solutions from Regulation 1177/2010 were incorporated in Croatian legislation through the Amendments to the Act on Transport in Liner and Occasional Coastal Shipping, also in 2013. At the end of 2019, new amendments to this Act*

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\* Petra Amižić Jelovčić, PhD, Full Professor, University of Split, Faculty of Law, Domovinskog rata 8, 21000 Split, Croatia, e-mail: petra.amizic@pravst.hr.

\*\* Dragan Bolanča, PhD, Full Professor, University of Split, Faculty of Law, Domovinskog rata 8, 21000 Split, Croatia, e-mail: dragan.bolanca@pravst.hr.

*were adopted, further improving the rights of persons with disabilities and persons with reduced mobility.*

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## 1. INTRODUCTION

Persons with disabilities and persons with reduced mobility face barriers and restrictions every day which prevent them from participating in society on an equal basis with others and from enjoying the full range of human rights, grounded in the Universal Declaration of Human Rights. Nevertheless, in recent years, there has been progress in the approach to persons with disabilities. The Convention on the Rights of Persons with Disabilities, adopted in 2006, prescribes in its Article 9 that every State Party “shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment and to transportation”.<sup>1</sup>

According to the official statistics of Eurostat,<sup>2</sup> ports in the EU-27 recorded almost 419 million maritime passengers in 2019,<sup>3</sup> which represents an increase of 1.8% compared to 2018. These numbers are the best evidence of the relevance of the maritime carriage of passengers in the EU. Accordingly, it was extremely important to create an adequate legal framework regulating this mode of transport. In the last decade, the EU has adopted several legal acts that are considered to make a significant contribution to the enhancement of the safety of passengers in maritime transport. The most important among them are Regulation EC

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<sup>1</sup> The Convention on the Rights of Persons with Disabilities, which was adopted in 2006 and entered into force in 2008, signalled a “paradigm shift” from traditional charity-oriented, medical-based approaches to disability to one based on human rights. It recognised also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person.

<sup>2</sup> Eurostat is the statistical office of the European Union situated in Luxembourg. Its mission is to provide high quality statistics for Europe. While fulfilling its mission, Eurostat promotes the following values: respect and trust, fostering excellence, promoting innovation, service orientation, professional independence. Providing the European Union with statistics at the European level that enable comparisons between countries and regions is a key task.

<sup>3</sup> Italy remained the largest maritime passenger transport country in Europe in 2019, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Maritime\\_passenger\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Maritime_passenger_statistics).

392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents,<sup>4</sup> and Regulation 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004.<sup>5</sup>

Before the adoption of Regulation 392/2009, there was no Community legislation in the EU regulating liability for the transport of passengers by sea.<sup>6</sup> Hence, the protection of passengers varied between Member States, depending on which international conventions, and which amendments to them, were ratified by the State in which the claim is settled.<sup>7</sup> As a result of the adoption of Regulation 392/2009,<sup>8</sup> a single set of rules was finally created across the EU Member States governing the liability of carriers to passengers travelling by sea in the event of an accident.<sup>9</sup>

Regulation 392/2009 introduced more severe provisions with regard to the existing regime of liability for the death of or personal injury to a passenger and the loss of or damage to luggage at sea. This Regulation lays down the Com-

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<sup>4</sup> Hereinafter: Regulation 392/2009. Text of Regulation 392/2009 in English: *Official Journal of the European Union L131/24*.

<sup>5</sup> Hereinafter: Regulation 1177/2010. Text of Regulation 1177/2010 in English: *Official Journal of the European Union L334/1*.

<sup>6</sup> These issues were governed by two sets of law: the internal law of the Member States and the international law for those Member States that have ratified the Convention on Limitation of Liability for Maritime Claims 1976 (hereinafter: LLMC Convention 1976. The maximum amount of reparation per passenger under the LLMC 1976 is 46, 666 SDR with a global limitation of 25 million SDR) or the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims 1976 (hereinafter: LLMC Protocol 1996. The maximum amount of reparation per passenger under the LLMC Protocol 1996 is 175,000 SDR).

<sup>7</sup> See: Amižić Jelovčić, P, *Rights of Passengers in Maritime Carriage – European Legislation*, *Proceedings Book of the International Workshop on Law and Politics*, 2015, p. 308.

<sup>8</sup> On 23 April 2009, the European Union adopted Regulation 392/2009 incorporating the provisions of the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea 1974, and of the Reservation and IMO Guidelines 2006, and made them binding on all Member States. In order to harmonise the date of application of the Regulation with the entry into force of the Protocol, on 12 December 2011 the EU acceded to the PAL Protocol 2002. The accession of the EU to the Protocol did not count in the sense of the prescribed conditions of its entry into force, but the purpose was to accelerate accessions to it and ratifications by the Member States so that the Protocol would enter into force before the date of the application of Regulation 392/2009. Nevertheless, Regulation 392/2009 came into force on 29 May 2009, considerably earlier than the PAL Protocol 2002 which came into force on 23 April 2014.

<sup>9</sup> See: Amižić Jelovčić, P., *op. cit.*, p. 308.

munity regime relating to liability and insurance for the carriage of passengers by sea as set out in the relevant provisions of the PAL Convention 1974,<sup>10</sup> as amended by the PAL Protocol 2002 and the IMO Reservation and Guidelines 2006.<sup>11</sup> Furthermore, this Regulation extends the application of those provisions to the carriage of passengers by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC and lays down certain supplementary requirements, as well.<sup>12</sup>

Regulation 392/2009 applies to any international carriage within the meaning of point 9 of Article 1 of the PAL Convention<sup>13</sup> and to carriage by sea within a single Member State on board ships of Classes A and B under Article 4 of Direc-

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<sup>10</sup> PAL 1974 was adopted by the Comité Maritime International (hereinafter: CMI) and the International Maritime Organization (hereinafter: IMO) in Athens on 13 December and came into force on 28 April 1987, having received the approval of ten states as required by Art. 24. See Tetley, W., *International Maritime and Admiralty Law*, Editions Yvon Blais, Montreal, 2003, pp. 703-714.

<sup>11</sup> The Legal Committee of the International Maritime Organization on 29 October 2006, at its 92<sup>nd</sup> session, adopted the text of reservation, intended for use as a standard reservation, to the PAL Protocol 2002 and the Guidelines for its implementation, to allow limitation of liability in respect of claims relating to war or terrorism. The aim is to put states in a position to ratify the PAL Protocol 2002 and afford passengers better cover. According to the text of reservation, the Government concerned reserves the right to and undertakes to limit liability to 250,000 units of account in respect of each passenger on each distinct occasion; or 340 million units of account overall per ship on each distinct occasion. This relates in particular to war insurance which, under the Guidelines, cover liability, if any, for loss suffered as a result of death or personal injury to a passenger caused by: war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power; capture, seizure, arrest restraint or detainment and the consequences thereof or any attempt thereat; derelict mines, torpedoes, bombs or other derelict weapons of war; an act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk; confiscation and expropriation. See: Bolanča, D.; Amižić Jelovčić, P., *Carriage of Passengers in Croatia – National Legislation and EU Law*, *Comparative Maritime Law*, Vol. 47, No. 162, 2008., p. 54.

<sup>12</sup> Article 1 of Regulation 392/2009 prescribed that the Commission should, no later than 30 June 2013, present a legislative proposal in order, *inter alia*, to extend the scope of this Regulation to ships of Classes C and D under Article 4 of Directive 98/18/EC, but the Commission did not exploit this opportunity.

<sup>13</sup> According to point 9, Article 1 of the PAL Convention “‘international carriage’ means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State”.

tive 98/18/EC,<sup>14</sup> where the ship is flying the flag of or is registered in a Member State, where the contract of carriage has been made in a Member State, or where the place of departure or destination, according to the contract of carriage, is in a Member State. It is emphasised that Member States may apply this Regulation to all domestic sea-going voyages. Thus, the EU Regulation extends the scope of the PAL Protocol 2002 to include certain domestic passenger services so that passengers can enjoy the same level of protection as they do on international journeys.<sup>15</sup>

Similarly to the PAL Protocol 2002, Regulation 392/2009 established a new liability regime by introducing a two-tier liability system<sup>16</sup> and adopting strict liability for death and personal injury claims caused by shipping incidents. Likewise, they both require compulsory insurance in respect of such liability and allow direct action against insurers.<sup>17</sup>

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<sup>14</sup> Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships. Text in English: *Official Journal of the European Union* L144 (hereinafter: Directive 98/18). According to Article 4 of Directive 98/18, passenger ships are divided into classes according to the sea area in which they operate. Class A means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D. Class B means a passenger ship engaged on domestic voyages in the course of which it is at no time more than 20 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height. Class C means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 2.5 m significant wave height is smaller than 10% over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 15 miles from a place of refuge, nor more than 5 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height. Class D means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 1.5 m significant wave height is smaller than 10% over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 6 miles from a place of refuge, nor more than 3 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

<sup>15</sup> Furthermore, the EU Regulation requires carriers engaged in the carriage of passengers on both domestic and international journeys to provide passengers with appropriate and comprehensive information regarding their rights. Amižić Jelovčić, P., *op. cit.*, p. 310.

<sup>16</sup> A two-tier liability system was implemented following the example of the Convention for the Unification of Certain Rules for International Carriage by Air (hereinafter: the Montreal Convention 1999).

<sup>17</sup> For more on liability according to Regulation 392/2009, see Amižić Jelovčić, P., *op. cit.*, pp. 310-313.

In comparison to the PAL Protocol 2002, Regulation 392/2009 gives the option of advance payment, which represents a novelty in maritime law.<sup>18</sup> Where the death of, or personal injury to, a passenger is caused by a shipping incident, the carrier who actually performed the whole or a part of the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis proportionate to the damage suffered within 15 days of the identification of the person entitled to damages. In the event of death, the payment shall not be less than EUR 21,000.<sup>19</sup> An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation.<sup>20</sup>

In addition, the carrier and/or performing carrier is obliged to provide passengers with appropriate and comprehensible information regarding their rights.<sup>21</sup> The right to information is just one of several important passenger rights elaborated in detail in Regulation 1177/2010.<sup>22</sup>

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<sup>18</sup> This legal institute, rather new for maritime carriage, was taken from air law. The EU harmonised its legislation with the provisions of the Montreal Convention 1999 by passing Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (hereinafter: Regulation 889/2002). Regulation 889/2002 determines in its annex that if a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. In the event of death, this advance payment shall not be less than 16,000 SDR (an approximate amount in local currency). For more detail, see Radionov, N., *et al.*, *Europsko prometno pravo*, Pravni fakultet, Zagreb, 2011, p. 430.

<sup>19</sup> This provision also applies where the carrier is established within the Community (Article 6 of Regulation 392/2009). Amižić Jelovčić, P., *op. cit.*, p. 313.

<sup>20</sup> It shall not be refundable, except in the cases set out in Article 3(1), which refers to exoneration of the carrier's liability, or Article 6 of the Athens Convention, which refers to contributory fault, or Appendix A to the IMO Guidelines, or where the person who received it is not the person entitled to damages.

<sup>21</sup> Where the contract of carriage is made in a Member State, this information shall be provided at all points of sale, including sale by telephone and via the Internet. Where the place of departure is in a Member State, that information shall be provided prior to departure. In all other cases, it shall be provided at the latest on departure. *Ibidem*, p. 314,

<sup>22</sup> Regulation 1177/2010 came into force on 6 January 2011 but became applicable on 8 December 2012. According to Article 22 of this Regulation, carriers and terminal operators shall, within their respective areas of competence, provide passengers with adequate information throughout their travel in formats which are accessible to everybody and in the same languages as those in which information is generally made available to all passengers. Particular attention must be paid to the needs of persons with disabilities and persons with reduced mobility. Moreover, carriers and terminal operators shall ensure that information on the rights of passengers under this Regulation is publicly available on board ships, in ports, if possible, and in port terminals (Article 23).

## 2. REGULATION 1177/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 24 NOVEMBER 2010 CONCERNING THE RIGHTS OF PASSENGERS WHEN TRAVELLING BY SEA AND INLAND WATERWAY AND AMENDING REGULATION (EC) No 2006/2004

In the early 1990s, under the influence of the trend of consumer rights protection, the EU launched a number of initiatives for the protection of passenger rights in all modes of transport.<sup>23</sup> The first steps in expanding the protection of passenger rights were undertaken in the area of air transport, which was the most developed segment of the market of passenger transportation. Following the example of legislation in air transport, a set of new rules was adopted to apply *mutatis mutandis* in other branches of transport.<sup>24</sup>

Before the adoption of Regulation 1177/2010, all rights of passengers in carriage by sea were regulated exclusively by Regulation 392/2009. By introducing Regulation 1177/2010, the EU made an extra effort to ensure a high level of protection of passengers comparable with that in other modes of transport.

Regulation 1177/2010 establishes rules for sea and inland waterway<sup>25</sup> transport. Its main goal is to achieve non-discrimination of passengers with regard to transport conditions offered by carriers,<sup>26</sup> as well as non-discrimination and assistance for persons with disabilities and persons with reduced mobility.<sup>27</sup> The Regulation protects the rights of passengers in cases of cancellation or delay; pre-

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<sup>23</sup> A passenger in carriage by sea and inland waterways may also be a consumer in a package travel contract during cruising and in both cases represents the weaker party of the contract. See Bolanča Kekez, Đ., *Rights of Passengers as a Consumer on Seagoing Cruises*, *Proceedings Book of the 2<sup>nd</sup> International Scientific Conference on Maritime Law*, Split, 2018, pp. 35–60.

<sup>24</sup> For more, see Bulum, B., *Prava putnika u pomorskom prijevozu prema Uredbi Europske unije broj 1177/2010*, *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 62, No. 4, 2012, p. 1078.

<sup>25</sup> “Inland waterway” means a natural or artificial navigable inland body of water, or system of interconnected bodies of water, used for transport, such as lakes, rivers or canals or any combination of these (Article 3(i) of Regulation 1177/2010).

<sup>26</sup> “Carrier” means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by passenger services or cruises to the general public (Article 3(d) of Regulation 1177/2010).

<sup>27</sup> “Disabled person” or “person with reduced mobility” means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the service made available to all passengers (Article 3(a) of Regulation 1177/2010).

scribes the obligation of providing a minimum of information to passengers;<sup>28</sup> and stipulates the procedure of handling complaints, as well as general rules on enforcement (Article 1 of Regulation 1177/2010). What is important is that Regulation 1177/2010 specifies the minimum standards of protection of passengers, but each carrier can offer passengers even better contractual conditions from those prescribed in this Regulation. The provisions of the Regulation are mandatory, so the rights and obligations that are recognised cannot be revoked or limited by the contract of carriage.<sup>29</sup>

According to Regulation 1177/2010, where the performance of the obligations under this Regulation has been entrusted to a performing carrier,<sup>30</sup> ticket vendor<sup>31</sup> or any other person, the carrier,<sup>32</sup> travel agent,<sup>33</sup> tour operator<sup>34</sup> or terminal operator<sup>35</sup> who has entrusted such obligations shall nevertheless be liable for the acts and omissions of that performing party, acting within that party's scope of employment.<sup>36</sup>

Article 2 of Regulation 1177/2010 prescribes its application in respect of passengers travelling (Article 2):

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<sup>28</sup> The absence of information regarding the events that lead to the carrier's liability towards the passengers is the root cause of passengers' unfamiliarity with the rights granted to them. This may also be the main reason for such a small number of complaints against carriers concerning the quality of transportation services by sea.

<sup>29</sup> *Ibidem*, p. 1083.

<sup>30</sup> "Performing carrier" means a person, other than the carrier, who actually performs the carriage wholly or partially (Article 3(h) of Regulation 1177/2010).

<sup>31</sup> "Ticket vendor" means any retailer concluding transport contracts on behalf of a carrier (Article 3(o) of Regulation 1177/2010).

<sup>32</sup> "Carrier" means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by passenger services or cruises to the general public (Article 3(d) of Regulation 1177/2010).

<sup>33</sup> "Travel agent" means any retailer acting on behalf of a passenger or a tour operator for the conclusion of transport contracts (Article 3(p) of Regulation 1177/2010).

<sup>34</sup> "Tour operator" means an organiser or retailer, other than a carrier, within the meaning of Article 2(2) and (3) of Directive 90/314/EEC (Article 3(q) of Regulation 1177/2010).

<sup>35</sup> "Terminal operator" means a private or public body in the territory of a Member State responsible for the administration and management of a port terminal (Article 3(s) of the Regulation 1177/2010).

<sup>36</sup> In addition to paragraph 1, the party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal operator shall be subject to the provisions of this Regulation, including provisions on liabilities and defences, with regard to the obligation entrusted (Article 5 of Regulation 1177/2010).

- a) on passenger services<sup>37</sup> where the port of embarkation is situated in the territory of a Member State;<sup>38</sup>
- b) on passenger services where the port of embarkation is situated outside the territory of a Member State and the port of disembarkation is situated in the territory of a Member State, provided that the service is operated by a Union carrier;<sup>39</sup>
- c) on a cruise<sup>40</sup> where the port of embarkation is situated in the territory of a Member State.<sup>41</sup>

It is equally important to emphasize to which passengers the Regulation does not apply. Such passengers are those travelling (Article 2(2) of Regulation 1177/2010):

- on ships certified to carry up to 12 passengers;
- on ships which have a crew responsible for the operation of the ship composed of not more than three persons or where the distance of the overall passenger service is less than 500 metres, one way;
- on excursion and sightseeing tours other than cruises; or
- on ships not propelled by mechanical means as well as original, and individual replicas of, historical passenger ships designed before 1965, built predominantly with the original materials, certified to carry up to 36 passengers.

Pursuant to this Regulation, all passengers travelling by sea or inland waterways have several fundamental rights. First of all, in the case of a cancellation or a delay in departure of a passenger service or a cruise, passengers departing

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<sup>37</sup> “Passenger service” means a commercial passenger transport service by sea or inland waterways operated according to a published timetable (Article 3(f) of Regulation 1177/2010).

<sup>38</sup> “Territory of a Member State” means a territory to which the Treaty on the Functioning of the European Union applies as referred to in Article 355 thereof, under the conditions set out therein (Article 3(b) of Regulation 1177/2010).

<sup>39</sup> “Union carrier” means a carrier established within the territory of a Member State or offering transport by passenger services operated to or from the territory of a Member State (article 3(e) of Regulation 1177/2010).

<sup>40</sup> “Cruise” means a transport service by sea or inland waterway, operated exclusively for the purpose of pleasure or recreation, supplemented by accommodation and other facilities, exceeding two overnight stays on board (Article 3(t) of Regulation 1177/2010).

<sup>41</sup> Articles 16(2), 18, 19 and 20(1) and (4), relating to information in the event of cancelled or delayed departures, re-routing and reimbursement in the event of cancelled or delayed departures and compensation of the ticket price in the event of delay in arrival, shall not apply to those passengers.

from port terminals or, if possible, passengers departing from ports, shall be informed by the carrier or, where appropriate, by the terminal operator, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled time of departure. Carriers should also inform passengers of the estimated departure time and estimated arrival time, as soon as that information is available (Article 16(1)).<sup>42</sup> Furthermore, where a carrier reasonably expects that the departure of a passenger service or a cruise will be cancelled or delayed by more than 90 minutes beyond its scheduled time of departure, passengers departing from port terminals should be offered free of charge snacks, meals or refreshments in reasonable relation to the waiting time, provided they are available or can reasonably be supplied (Article 17(1)). In the case of a cancellation or a delay in departure where a stay of one or more nights or a stay additional to that intended by the passenger becomes necessary, where and when physically possible, the carrier should offer passengers free of charge adequate accommodation on board, or ashore.<sup>43</sup> In this case of cancellation or delay in departure, the passenger should immediately be offered a choice between re-routing to the final destination, under comparable conditions, as set out in the transport contract, at the earliest opportunity and at no additional cost; or reimbursement of the ticket price<sup>44</sup> and, where relevant, a return service free of charge to the first

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<sup>42</sup> See: Marin, J., *Protection of the Rights of Passengers Travelling by Sea, Book of Proceedings of the 4<sup>th</sup> International Maritime Science Conference IMSC, 2012*, p. 4.

<sup>43</sup> For each passenger, the carrier may limit the total cost of accommodation ashore, not including transport to and from the port terminal and place of accommodation, to EUR 80 per night, for a maximum of three nights (Article 17(2) of Regulation 1177/2010). This shall not apply where the carrier proves that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship (Article 20(3) of Regulation 1177/2010).

<sup>44</sup> Carriers should provide for the payment of compensation for passengers in the event of the cancellation or delay of a passenger service based on a percentage of the ticket price, except when the cancellation or delay occurs due to weather conditions endangering the safe operation of the ship. Carriers should, in accordance with generally accepted principles, bear the burden of proving that the cancellation or delay was caused by such weather conditions.

Weather conditions endangering the safe operation of the ship should include, but not be limited to, strong winds, heavy seas, strong currents, difficult ice conditions and extremely high or low water levels, hurricanes, tornados and floods. Extraordinary circumstances should include, but not be limited to, natural disasters such as fires and earthquakes, terrorist attacks, wars and military or civil armed conflicts, uprisings, military or illegal confiscations, labour conflicts, landing any sick, injured or dead person, search and rescue operations at sea or on inland waterways, measures necessary to protect the environment, decisions taken by traffic management bodies or port authorities, or decisions by the competent authorities with regard to public order and safety as well as to cover urgent transport needs.

point of departure, as set out in the transport contract, at the earliest opportunity.<sup>45</sup> It is interesting that Regulation 1177/2010 does not make a distinction between cases of cancelled departure and delayed departure.

On the other hand, Regulation 1177/2010 stipulates separately cases of delay in arrival and imposes on carriers the obligation to compensate the ticket price. Without losing the right to transport, passengers may request compensation from the carrier if they are facing a delay in arrival at the final destination as set out in the transport contract.<sup>46</sup>

Further protection of passenger rights in cases of interrupted travel is ensured by Article 21 of this Regulation which gives passengers the opportunity to seek damages in accordance with national law in respect of loss resulting from the cancellation or delay of transport services before national courts, including under Directive 90/314/EEC.<sup>47</sup>

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<sup>45</sup> The payment of the reimbursement provided for in paragraphs 1(b) and 2 shall be made within 7 days, in cash, by electronic bank transfer, bank order or bank cheque, of the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made where the journey no longer serves any purpose in relation to the passenger's original travel plan. Where the passenger agrees, the full reimbursement may also be paid in the form of vouchers and/or other services in an amount equivalent to the price for which the ticket was purchased, provided that the conditions are flexible, particularly regarding the period of validity and the destination (Article 18(3) of Regulation 1177/2010).

<sup>46</sup> The minimum level of compensation shall be 25% of the ticket price for a delay of at least:

- a) 1 hour in the case of a scheduled journey of up to 4 hours;
- b) 2 hours in the case of a scheduled journey of more than 4 hours, but not exceeding 8 hours;
- c) 3 hours in the case of a scheduled journey of more than 8 hours, but not exceeding 24 hours; or
- d) 6 hours in the case of a scheduled journey of more than 24 hours.

If the delay exceeds twice the time set out in points (a) to (d), the compensation shall be 50% of the ticket price (Article 19 of Regulation 1177/2010). The compensation shall be paid within one month after the submission of the request for compensation. It may be paid in vouchers and/or other services, provided that the conditions are flexible, particularly regarding the period of validity and the destination, but shall be paid in money at the request of the passenger. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Carriers may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 6 (Article 19(6)). Article 19 shall not apply where the carrier proves that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship or by extraordinary circumstances hindering the performance of the passenger service which could not have been avoided even if all reasonable measures had been taken (Article 20(4)). Marin, J., *op. cit.*, pp. 4-5.

<sup>47</sup> Directive 90/314/EEC on package travel, package holidays and package tours regulates the minimum pre-contractual information to provide to the consumer, the formal re-

## 2.1. Maritime carriage of passengers with disabilities and passengers with reduced mobility

Regulation 1177/2010 devotes special attention to the rights of disabled persons and persons with reduced mobility. Besides general passenger rights, persons with disabilities and persons with reduced mobility have some additional rights when travelling by waterborne transport so as to provide them with the right to transport on an equal footing with other passengers.

To begin with, disabled persons and persons with reduced mobility have the right to access transport without any discrimination. Carriers, travel agents and tour operators shall not refuse to accept a reservation,<sup>48</sup> to issue or otherwise provide a ticket or to embark persons on the grounds of disability or of reduced mobility as such.<sup>49</sup> They may refuse to accept a reservation from, to issue or otherwise provide a ticket to or to embark a disabled person or person with reduced mobility only in order to meet applicable safety requirements established by international, Union or national law, or in order to meet safety requirements established by the competent authorities, or where the design of the passenger ship or port infrastructure and equipment, including port terminals, makes it impossible to carry out the embarkation, disembarkation or carriage of the said person in a safe or operationally feasible manner.<sup>50</sup> In the case of these events, carriers, travel agents and tour operators shall make all reasonable efforts to propose to the person concerned acceptable alternative transport on a passenger service or a cruise operated by the carrier (Article 8 of Regulation 1177/2010). In this respect, a person with disability or a person with reduced mobility shall be offered the choice between the right to reimbursement and re-routing if that person, who holds a reservation or has a ticket and has complied

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quirements for package travel contracts, the obligations of the organiser when failing to comply with its contractual obligations (cancellation, change in the services included in the contract, non-performance, civil liability, etc.) and the provision of a financial guarantee to cover the organiser's insolvency. In November 2015, the EU adopted a revision of the Package Travel Directive. For more, see: Bolanča Kekez, Đ., *op. cit.*, pp. 47-51.

<sup>48</sup> "Reservation" means a booking of a specific departure of a passenger service or a cruise (Article 3(r) of Regulation 1177/2010).

<sup>49</sup> Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost under the same conditions that apply to all other passengers (Article 7 of Regulation 1177/2010).

<sup>50</sup> Where strictly necessary and under these conditions, carriers, travel agents and tour operators may require that a person with disability or a person with reduced mobility be accompanied by another person who is capable of providing the assistance required by the disabled person or person with reduced mobility. As regards passenger services, such an accompanying person shall be carried free of charge.

with the requirements,<sup>51</sup> is denied embarkation on the basis of this Regulation. In these cases, disabled persons and persons with reduced mobility shall be offered the choice between:<sup>52</sup>

- a) reimbursement within 7 days, paid in cash, by electronic bank transfer, bank order or bank cheque, of the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation to the passenger's original travel plan, plus, where relevant, a return service to the first point of departure, at the earliest opportunity; or
- b) re-routing to the final destination as set out in the transport contract, at no additional cost and under comparable conditions, at the earliest opportunity; or
- c) re-routing to the final destination as set out in the transport contract, under comparable conditions, at a later date at the passenger's convenience, subject to availability of tickets.

In cooperation with organisations representing persons with disabilities or persons with reduced mobility, carriers and terminal operators shall, where appropriate through their organisations, establish, or have in place, non-discriminatory access conditions for the transport of persons with disabilities and persons with reduced mobility and accompanying persons. The access conditions shall, upon request, be communicated to national enforcement bodies.<sup>53</sup> Under

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<sup>51</sup> The special requirement means the obligation of persons with disabilities or persons with reduced mobility to notify the carrier, at the time of the reservation or advance purchase of the ticket, of their specific needs with regard to accommodation, seating or services required or their need to bring medical equipment, provided the need is known at that time (Article 11(2) of Regulation 1177/2010). When carriers, travel agents and tour operators have recourse to paragraphs 1 or 4, they shall immediately inform the disabled person or person with reduced mobility of the specific reasons therefor. On request, those reasons shall be notified to the disabled person or person with reduced mobility in writing, no later than five working days after the request.

<sup>52</sup> When, in the case where a town, city or region is served by several ports, a carrier offers a passenger a journey to an alternative port to that for which the reservation was made, the carrier shall bear the cost of transferring the passenger from that alternative port either to that for which the reservation was made, or to another nearby destination agreed with the passenger (Annex 1of Regulation 1177/2010).

<sup>53</sup> The access conditions mentioned above shall be made publicly available by carriers and terminal operators physically or on the Internet, in accessible formats on request, and in the same languages as those in which information is generally made available to all passengers. Particular attention shall be paid to the needs of disabled persons and persons

the provisions of Regulation 1177/2010, each Member State shall designate a new or existing body or bodies<sup>54</sup> responsible for the enforcement of this Regulation as regards passenger services and cruises from ports situated on its territory and passenger services from a third country to such ports.<sup>55</sup>

Furthermore, persons with disabilities and persons with reduced mobility have the right, free of charge, to assistance<sup>56</sup> by carriers and terminal opera-

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with reduced mobility (Article 9(2) of Regulation 1177/2010). Carriers, travel agents and tour operators shall ensure that all relevant information, including online reservation and information, concerning the conditions of carriage, journey information and access conditions is available in appropriate and accessible formats for persons with disabilities and persons with reduced mobility. Persons needing assistance shall receive confirmation of such assistance by any means available, including electronic means or Short Message Service (SMS).

<sup>54</sup> Each Member State should appoint at least one body which, when applicable, should have the power and capability to investigate individual complaints and to facilitate dispute settlement. Passengers should be entitled to receive a substantiated reply from the designated body, within a reasonable period of time.

<sup>55</sup> Carriers, terminal operators and, when applicable, port authorities shall inform passengers in an appropriate manner on board ships, in ports, if possible, and in port terminals, of the contact details of the enforcement body designated by the Member State concerned (Article 23(3)). EU rules oblige Member States to nominate or create “national enforcement bodies”, whose role is to verify that transport operators are treating all passengers in accordance with their rights. Passengers who believe their rights under the regulation have not been respected should contact the body in the country where the incident took place.

<sup>56</sup> Assistance in ports, including embarkation and disembarkation embraces all assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to: communicate their arrival at a port terminal or, if possible, a port and their request for assistance, move from an entry point to the check-in counter, if any, or to the ship, check in and register baggage, if necessary, proceed from the check-in counter, if any, to the ship, through emigration and security points, embark the ship, with the provision of lifts, wheelchairs or other assistance needed, as appropriate, proceed from the ship door to their seats/area, store and retrieve baggage on the ship, proceed from their seats to the ship door, disembark from the ship, with the provision of lifts, wheelchairs or other assistance needed, as appropriate, retrieve baggage, if necessary, and proceed through immigration and customs points, proceed from the baggage hall or the disembarkation point to a designated point of exit, if required, make their way to the toilet facilities (if any). Under assistance, within the meaning of this Regulation, the following are also considered: making it possible for accompanying person to be allowed to provide the necessary assistance in the port and with embarking and disembarking, handling of all necessary mobility equipment, including equipment such as electric wheelchairs, temporary replacement of damaged or lost mobility equipment with equipment which is a suitable alternative, ground handling of recognised assistance dogs, when relevant, and communication in accessible formats of information needed to embark and disembark (Annex 2 of Regulation 1177/2010).

tors in ports and on board ships,<sup>57</sup> including with embarkation and disembarkation. The assistance shall, if possible, be adapted to the individual needs of the disabled person or person with reduced mobility (Article 10 of Regulation 1177/2010). Article 11 of this Regulation prescribes that carriers and terminal operators shall, within their respective areas of competence, provide assistance to disabled persons and persons with reduced mobility under the condition that they have notified the carrier or terminal operator of their need for assistance at least 48 hours in advance<sup>58</sup> and have presented themselves at an agreed time ahead of the published embarkation time or departure time<sup>59</sup> at the port or at the designated point.<sup>60</sup>

The Regulation envisions that persons with disabilities or persons with reduced mobility should notify the carrier, at the time of reservation or advance purchase of the ticket, of their specific needs with regard to accommodation, the seating or services required, or their need to bring medical equipment, provided the need is known at that time.<sup>61</sup> If travel agents or tour operators receive the no-

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<sup>57</sup> Assistance on board ships includes: carriage of recognised assistance dogs on board the ship (subject to national regulations), carriage of medical equipment and of the mobility equipment necessary for the person with disability or person with reduced mobility (including electric wheelchairs), communication of essential information concerning a route in accessible formats, making all reasonable efforts to arrange seating to meet the needs of persons with disabilities or persons with reduced mobility on request and subject to safety requirements and availability, assistance in moving to toilet facilities (if required). Where a disabled person or person with reduced mobility is assisted by an accompanying person, the carrier shall make all reasonable efforts to give such a person a seat or a cabin next to the disabled person or person with reduced mobility (Annex 3 of Regulation 1177/2010).

<sup>58</sup> This period can even be shorter if this is agreed between the passenger and the carrier or terminal operator.

<sup>59</sup> The passenger should be there at a time stipulated in writing by the carrier which shall not be more than 60 minutes before the published embarkation time or if no embarkation time is stipulated, no later than 60 minutes before the published departure time, unless a shorter period is agreed between the passenger and the carrier or terminal operator.

<sup>60</sup> Carriers and terminal operators shall designate a point inside or outside port terminals at which disabled persons or persons with reduced mobility can announce their arrival and request assistance. That point shall be clearly signposted and shall offer basic information about the port terminal and assistance provided, in accessible formats (Article 12(3), Regulation 1177/2010).

<sup>61</sup> Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided. The passenger shall receive confirmation stating that the assistance needs have been notified as required (Article 11(3), Regulation 1177/2010). Where no notification is made, carriers and terminal operators shall, nonetheless, make all reasonable efforts to ensure that the assis-

tification they shall, within their normal office hours, transfer the information to the carrier or terminal operator without delay who shall designate a point inside or outside port terminals at which disabled persons or persons with reduced mobility can announce their arrival and request assistance.<sup>62</sup> In order to provide best possible assistance to passengers in need, carriers and, where appropriate, terminal operators shall establish disability-related training procedures, including instructions for their personnel who are responsible for the reservation and selling of tickets or for embarkation and disembarkation, as well for their personnel entrusted with assistance to disabled persons and persons with reduced mobility (Article 14).<sup>63</sup>

According to Regulation 1177/2010, carriers and terminal operators are liable for loss suffered as a result of the loss of or damage to mobility equipment or other specific equipment used by a person with disability or person with reduced mobility if the incident which caused the loss was due to the fault or neglect of the carrier or the terminal operator.<sup>64</sup> The fault or neglect of the carrier is presumed for the loss caused by a shipping incident.<sup>65</sup> Article 15 of the

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tance is provided in such a way that the person with disability or person with reduced mobility is able to embark, disembark and travel on the ship. Where a person with disability or person with reduced mobility is accompanied by a recognised assistance dog, that dog shall be accommodated together with that person, provided that the carrier, travel agent or tour operator is notified in accordance with applicable national rules on the carriage of recognised assistance dogs on board passenger ships, where such rules exist.

<sup>62</sup> That point must be clearly signposted and must offer basic information about the port terminal and assistance provided, in accessible formats (Article 12 of Regulation 1177/2010).

<sup>63</sup> Disability-related training comprises disability-awareness training (including instructions) and disability-assistance training (including instructions). The first includes awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of persons whose mobility, orientation or communication may be reduced, dealing with unexpected occurrences, interpersonal skills and methods of communication with people with hearing impairments, visual impairments or speech impairments and people with a learning disability, etc. The second form of training refers to techniques for escorting passengers with visual impairments and for the handling and carriage of recognised assistance dogs, the use of boarding and disembarking assistance equipment used and knowledge of the appropriate boarding and disembarking assistance procedures that safeguard the safety and dignity of persons with disabilities and persons with reduced mobility, a knowledge of first aid (Annex 4 of the Regulation 1177/2010).

<sup>64</sup> This article does not apply if Article 4 of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (10) applies.

<sup>65</sup> According to Article 3(u) of this Regulation, a “shipping incident” means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship.

Regulation foresees that compensation corresponds to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs.<sup>66</sup>

To make sure that all the rights and obligations covered by this Regulation are honoured, it is envisaged that carriers and terminal operators will set up or have in place an accessible complaint-handling mechanism.<sup>67</sup> As mentioned above, each national enforcement body must take measures necessary to ensure compliance with this Regulation. Article 25 prescribes that any passenger may submit a complaint, in accordance with national law, to the national enforcement body, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation.<sup>68</sup> The competent body must provide passengers with a substantiated reply to their complaint within a reasonable period. In this respect, every Member State has an option (Article 25(3)). It may decide that the passenger, as a first step, shall submit the complaint covered by the Regulation to the carrier or terminal operator, and/or that the national enforcement body or any other competent body designated by the Member State will act as an appeal body for complaints not resolved under Article 24.<sup>69</sup>

The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and should take all the measures necessary to ensure that they are implemented.<sup>70</sup> The penalties provided for should be effective, proportionate and dissuasive.<sup>71</sup> The Commission had the

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<sup>66</sup> Paragraphs 1 and 2 do not apply if Article 4 of Regulation (EC) No 392/2009 applies (Article 15(3) of Regulation 1177/2010).

<sup>67</sup> Where a passenger covered by this Regulation seeks to make a complaint to the carrier or terminal operator, he shall submit it within 2 months from the date on which the service was performed or when a service should have been performed. Within 1 month of receiving the complaint, the carrier or terminal operator shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than 2 months from the receipt of a complaint (Article 24 of Regulation 1177/2010).

<sup>68</sup> This body shall, in its organisation, funding decisions, legal structure and decision-making, be independent of commercial interests (Article 25(1) of Regulation 1177/2010).

<sup>69</sup> Where a passenger covered by this Regulation wants to make a complaint to the carrier or terminal operator, he shall submit it within 2 months from the date on which the service was performed or when a service should have been performed. Within 1 month of receiving the complaint, the carrier or terminal operator shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than 2 months from the receipt of a complaint.

<sup>70</sup> In Croatia, these penalties are prescribed by Article 1016 of the Croatian Maritime Code.

<sup>71</sup> Member States had the obligation to notify those rules and measures to the Commission by 18 December 2012 and shall notify it without delay of any subsequent amendment affecting them.

obligation to report to the European Parliament and to the Council by 19 December 2015 on the operation and the effects of the Regulation. The report was to be accompanied where necessary by legislative proposals implementing in further detail the provisions of the Regulation, or amending it (Article 29 of Regulation 1177/2010).<sup>72</sup> According to the latest report, passengers' organisations are generally satisfied with the Regulation, but they see room for improvement. They consider that carriers and port terminal operators have shown a positive approach to the implementation and application of the Regulation, but that work remains to be done by operators and NEBs. What is noticeable is that the level of application varies significantly between Member States and between carriers. Regarding the right of mobility of people with disabilities and people with reduced mobility, further action should be taken especially in relation to vessels and terminals that should be made more accessible. Moreover, carrier and terminal staff should be better trained to provide appropriate assistance, and organisations representing persons with disabilities should be more systematically consulted on the implementation of the relevant provisions.

### 3. CARRIAGE OF PASSENGERS BY SEA IN CROATIA

The Republic of Croatia became a Member of the European Union on 1 July 2013. As a Member State, Croatia has fully integrated EU legislation into its national law. The carriage of passengers and luggage by sea in Croatia is regulated by Articles 598-633 of the Croatian Maritime Code. The new Croatian Maritime Code<sup>73</sup> was passed on 8 December 2004, and came into force on 29 December 2004.<sup>74</sup> Amendments to the CMC from 2013 harmonised Croatian legislation on

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<sup>72</sup> The latest report was submitted in May 2016.

<sup>73</sup> The extensive text of the CMC is divided into twelve parts and has 1,032 articles. Hereinafter: CMC.

<sup>74</sup> See *Official Gazette*, No. 181/04, 76/07, 146/08, 61/11, 56/13, 26/15, 17/19. The CMC supersedes the old Maritime Code which was in force from 22 March 1994. (See *Official Gazette*, No. 17/94, 74/94 and 43/96). For more details on the superseded act, see Bolanča, D.; Luttenberger, A., *Some Views on the New Croatian Maritime Code*, *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 32, No. 1-2 (39-40), 1995, pp. 113-117; Bolanča, D., *The New Croatian Maritime Code*, *Acta Juridica Hungarica*, Vol. 38, No. 1-2, 1997, pp. 60-63; Grabovac, I., *Plovidbeno pravo Republike Hrvatske*, Književni krug Split, 2003, pp. 11-424. About the new CMC, see Grabovac, I., *Suvremeno hrvatsko pomorsko pravo*, Književni krug Split, 2005, pp. 7-243; Pavić, D., *Pomorsko imovinsko pravo*, Književni krug Split, 2006, pp. 29-534; Luttenberger, A., *Pomorsko upravno pravo*, Pomorski fakultet, Rijeka, 2005, pp. 13-195; Grabovac, I., Petrinović, R., *Pomorsko pravo (pomorsko javno, upravno i radno pravo)*, Pomorski fakultet, Split, 2006, pp. 1-109; Corić, D., *Novi Pomorski zakonik*, Collected

the maritime carriage of passengers with EU Regulation 392/2009, while solutions from Regulation 1177/2010 were incorporated in Croatian legislation in 2013 through the Amendments to the Act on Transport in Liner and Occasional Coastal Shipping.<sup>75</sup>

According to Article 612 of the CMC, Regulation 392/2009 applies to the transport of passengers and their luggage in international and domestic navigation on ships of class A and B, as opposed to the carriage of passengers and their luggage in domestic navigation, on ships that do not belong to class A and B, in which case the provisions of this Code will be in force. Compared to Regulation 392/2009, the carrier's liability in national navigation on ships that are not class A or B, according to the CMC, is less severe and is based on proven or presumed fault depending on whether the death of or personal injury to a passenger was caused during the navigation or as a result of shipwreck, collision, stranding, explosion, fire or defect of the ship (Article 613 - 615 CMC).<sup>76</sup> The liability of the carrier for the death of or personal injury to a passenger is limited in all cases to 175,000 SDR per passenger and per carriage (Article 620 CMC).<sup>77</sup>

Article 606 CMC explicitly states that the provisions of Regulation 1177/2010 apply to passenger rights, except in respect of passengers travelling:

- a) on vessels authorised to transport up to 12 people;
- b) on vessels whose crew does not count more than three members, or where the length of the overall passenger service is less than 500 metres in one direction;

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Papers *Pomorski zakonik Republike Hrvatske i druge novine iz područja pomorskog i prometnog prava*, Rijeka, 2005, pp. 9-28.

<sup>75</sup> See *Official Gazette*, No. 33/06, 38/09, 87/09, 18/11, 80/13, 56/16, 121/19. For more on liner shipping, see Mandić, N.; Lovrić, I., *Koncesije za obavljanje javnog prijevoza u linijskom obalnom pomorskom prometu*, Naše more, Vol. 58, No. 3-4, 2011, pp. 112-123; Mandić, N.; Karamarko, A., *Pregled Zakona o prijevozu u linijskom i povremenom obalnom pomorskom prometu*, *Zbornik radova 3. međunarodne konferencije o pomorskoj znanosti – IMSC*, 2011, pp. 189-204.

<sup>76</sup> Amižić Jelovčić, P., *op. cit.*, p. 318.

<sup>77</sup> If the total amount payable to all claimants under this article exceeds the global limitation of liability available to the carrier under Articles 385-400 CMC, the carrier may also invoke the latter limitation. See: Marin, J., *Ugovori o prijevozu putnika i prtljage morem*, Pravni fakultet, Zagreb, 2005, pp. 18-19. The CMC adopts solutions from the LLMC 1976 and the LLMC Protocol 1996. According to these acts, in respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the carrier is limited to 175,000 SDR multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate. Bolanča, D.; Amižić Jelovčić, P., *op. cit.*, p. 55.

- c) on excursion and sightseeing tours different from a cruise;
- d) on vessels which are not mechanically operated, as well as original and individual replicas of historical passenger vessels designed before 1965, made largely of original material and authorised to transport up to 36 passengers.

Bearing in mind that Croatia has become a major touristic destination, especially in the last decade, it is particularly interesting to make a close study of the application of this Regulation in the country.<sup>78</sup> The national enforcement body in Croatia responsible for the enforcement of this Regulation as regards passenger services and cruises from ports situated on its territory and passenger services from a third country to Croatian ports is the Coastal Liner Services Agency situated in Split (CLSA).<sup>79</sup> Since Article 26 of the Regulation obliged enforcement bodies of all Member States to publish a report by 1 June 2015 and every 2 years thereafter on their activity in the previous two calendar years, the CLSA has published three such reports so far. They contain in particular a description of actions taken in order to implement the provisions of this Regulation, the details of sanctions applied, and statistics on the complaints and the sanctions applied.

The first report was published in June 2015, a year and a half after Croatia became a Member State of the EU. This report highlights the most important passenger rights according to the regulation, as well as the sanctions prescribed by Article 1016g CMC in the case of violations of Regulation 1177/2010. Accordingly, the legal entity performing the transport, the terminal operator, the travel agent or tour operator that acts contrary to the provisions of the regulations under Article 606 of this Code can be fined from HRK 40,000 to 150,000 for an offence. Paragraph 2 of the same article defines the fine for the legal entity performing the transport, the terminal operator, the travel agent or tour operator for an offence in violation of paragraph 1 mentioned above. They can be fined from HRK 30,000 to 100,000. Finally, the responsible person of the legal entity performing the transport, the terminal operator, travel agent or tour operator can be fined HRK 5,000 to 15,000 for an offence in violation of paragraph 1 of this Article.

The second CLSA report from June 2017, for the period from 1 January 2015 to 31 December 2016, contains the same information, but, in contrast to the first report, includes some passenger complaints as well. Only one of the five com-

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<sup>78</sup> In 2021 alone, and only in Split, the arrival of 248 cruise ships was announced. <https://portsplit.hr/kruzna-putovanja/najava-dolazaka/>.

<sup>79</sup> Mandić, N.; Amižić Jelovčić, P., *Novelties in the Law on Liner Shipping and Occasional Coastal Maritime Traffic of 2013*, *Poredbeno pomorsko pravo*, Vol. 53, No. 168, 2014., pp. 127-142.

plaints received was related to a person with disability or a person with reduced mobility. Specifically, the interested party pointed out in their complaint the difficulties suffered during the embarkation of a passenger with disability to the ferry. The CLSA requested the carrier's declaration regarding this. The carrier said that this was an isolated case and that they had made special efforts to educate their crew to assist persons with disabilities and persons with reduced mobility in a proper manner, all in order to avoid similar situations in the future.

The third report was submitted in June 2019 and it referred to the 2017 and 2018 period where there were only four complaints registered and none of them was about a violation of the rights of a person with disability.<sup>80</sup>

At first sight, the fact that there was only one complaint regarding persons with disabilities or persons with reduced mobility during the period of more than five years leads to the conclusion that the enforcement of Regulation 1177/2010 was more than successful in Croatia. Unfortunately, the truth is fundamentally different. The most probable reason why there were no additional complaints up to 31 December 2019 was due to the fact that passengers were not aware of their rights or the procedures prescribed by this European regulation, as well by the fact they simply decided not to report. Regrettably, most Croatian ferries do not meet the conditions necessary to ensure appropriate assistance to passengers in need during their embarkation, transport and disembarkation.

The coastal liner service in Croatia is provided by 13 shipping companies with a combined fleet of 77 ships overall. Among these ships, only 30 have loading platforms accessible to persons with disabilities and persons with reduced mobility, while 31 are equipped with toilet facilities accessible to persons in need.<sup>81</sup> One of the main remarks of persons with disabilities is the insufficient number of ships suitable for them. They do not consider loading ramps to be an appropriate way for embarkation and disembarkation, as opposed to escalators and elevators which are a better solution but are rare in practice.<sup>82</sup> Where no suitable form of embarkation and disembarkation is ensured, the alternative for persons with disabilities is to spend the whole journey in the garage

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<sup>80</sup> <https://agencija-zolpp.hr/wp-content/uploads/2019/07/2017-2018-Izvjesce-o-provedbi-Uredbe-EU-1177-2010.pdf>.

<sup>81</sup> [https://mmpi.gov.hr/UserDocsImages/arhiva/JS%20MAR%20-%20STRAT%20FINAL%20MPPI%2021-2\\_14.pdf](https://mmpi.gov.hr/UserDocsImages/arhiva/JS%20MAR%20-%20STRAT%20FINAL%20MPPI%2021-2_14.pdf). These numbers do not coincide with the numbers from unofficial sources which claim that the real numbers are much lower.

<sup>82</sup> In cases where there are no escalators or elevators, persons with disabilities must be carried up to the passenger seating area which they find rather humiliating. In the Croatian liner service, there are only two ferries with elevators.

area in the open or in their vehicle, where high costs are incurred to embark the vehicle. At any rate, both of these alternatives are unacceptable from any aspect of human rights.

In order to overcome this problem, all interested parties<sup>83</sup> made an unofficial arrangement in April 2018, pursuant to which persons with disabilities were to have the right to a free ticket for their vehicle. This solution was intended to be a kind of compensation in cases where persons with disabilities were travelling by inaccessible ships. Parties consented to the Plan of the Ministry of the Sea, Transport and Infrastructure whose main goal was to improve accessibility to ferries and catamarans.<sup>84</sup> Moreover, in accordance with this plan, persons with disabilities were entitled to a free ticket as well, while their accompanying persons were to have the right to a 50% discount on their personal ticket. In order to realize these improvements, necessary amendments to the current Croatian legislation had to be made. Meanwhile, waiting for those legislative changes, very important progress was made in October 2018 when the Governing Council of CLSA, on the recommendation of the Ministry of the Sea, Transport and Infrastructure, made a decision on free-of-charge transport for passenger cars licensed to persons with disabilities or to parents, legal guardians or a legal representative of persons with disabilities.<sup>85</sup>

Finally, amendments to the basic regulation governing public transport in liner coastal shipping in the Republic of Croatia, the Act on the Transport in Liner and Occasional Coastal Shipping, were adopted at the end of 2019 and they introduced new provisions related to the privileged transport of passengers and vehicles, in particular the transport of persons with disabilities and children with disabilities and their accompanying persons.<sup>86</sup>

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<sup>83</sup> The Croatian Association of Disabled Persons, the Ministry of the Sea, Transport and Infrastructure, Jadrolinija and the CLSA.

<sup>84</sup> The Croatian Ministry of Maritime Affairs, Transport and Infrastructure is very much aware that future ferries should be equipped with elevators, while catamarans should have new accessible platforms. In this way, all persons with disabilities and persons with reduced mobility would be able to access the ship in an acceptable way.

<sup>85</sup> This benefit referred only to Jadrolinija ships. A precondition was to submit an application enclosing explicit reasons and the date of the planned voyage three days beforehand.

<sup>86</sup> The provisions on reimbursement of funds for free transport are regulated in more detail in the 2019 Amendments, as is the possibility of launching a public tender for public transport on a state line, together with, for that purpose, a built vessel owned by the CLSA or the construction of a ship with financial support from the EU. For more details, see Mandić, N.; Nikčević, J., *New Provisions on Public Transport in Liner and Occasional Coastal Shipping Service in Croatian and Montenegrin Law*, *Proceedings Book of the 3<sup>rd</sup> International Scientific Conference on Maritime Law*, Split, 2021, p. 138.

Until these amendments were adopted, the right to privileged public transport, which included free transport and discounted transport, was granted to the following persons:

1. natural persons residing on islands;
2. legal persons and trade owners established on an island;
3. children up to 12 years of age;
4. health service providers and vehicles during the provision of regular and urgent transport of patients from the island to the mainland and vice versa;
5. employees and vehicles of other public services in the case of emergency;
6. other persons entitled to this right based on special regulations.

The right to free transport was granted to pupils, students, pensioners and persons older than 65 years residing on an island, for lines which connect the island of their permanent residence with the mainland, and other islands; to health service providers and vehicles during the provision of regular and urgent transport of patients from the island to the mainland and vice versa, and employees and vehicles of other public services in an emergency.<sup>87</sup>

Besides the above-mentioned categories of persons, pursuant to Article 47, paragraph 3, subparagraph 9 of the amended act, beneficiaries of the right to free transport are persons with disabilities diagnosed with damage to their lower extremities of 80% or more, invalids of the Croatian Homeland War diagnosed with physical damage of 100%, persons diagnosed with physical damage of sight of 100%, deaf and blind persons with physical damage of 100%, and persons with disabilities diagnosed with functional damage of the 3<sup>rd</sup> and 4<sup>th</sup> degree. They are entitled to a free vehicle ticket as well. Furthermore, pursuant to Article 47, paragraph 3, subparagraph 10, children with disabilities residing on an island and children diagnosed with functional damage of the 3<sup>rd</sup> and 4<sup>th</sup> degree regardless of their place of residence also have the right to a free ticket.<sup>88</sup>

It is important to emphasise that these amendments are not aligned with the Ordinance on the terms and procedures of the realization of the right to privileged transport on public maritime transport lines,<sup>89</sup> whose amendments are expected to be introduced shortly.

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<sup>87</sup> Article 47 of the Act on the Transport in Liner and Occasional Coastal Shipping.

<sup>88</sup> They are also entitled to a free ticket for the vehicle used for their transportation. The same right is recognised for their accompanying person (Article 47(4) of the Act on Transport in Liner and Occasional Coastal Shipping).

<sup>89</sup> *Official Gazette*, No. 41/17.

#### 4. CONCLUSION

The maritime carriage of passengers represents an activity of special interest to the international community and to the European Union. Ever since the 1970s, enormous effort has been made to create an appropriate legal framework for this issue. Major progress was accomplished by introducing the PAL Protocol 2002 which radically altered the previous Athens convention with its protocols. The PAL Protocol 2002 established a new liability regime by introducing a two-tier liability system and adopting strict liability for death and personal injury claims caused by shipping incidents. The PAL Protocol 2002 requires compulsory insurance in respect of such liability and allows direct action against insurers. Although this international document gives passengers satisfactory rights, the EU took a further step towards its ultimate goal, which is the full and adequate protection of passengers, when it adopted Regulation 392/2009 and Regulation 1177/2010. Regulation 392/2009 incorporates the relevant provisions of the PAL Protocol 2002 and extends the application of those provisions to carriage by sea within a single Member State. It also contains some additional provisions to the PAL Protocol 2002, such as advance payment and the special regulation of mobility equipment, all in order to achieve complete uniformity within the EU as well as the suitable protection of passengers. In addition, Regulation 1177/2010 establishes rules for sea and inland waterway transport whose main goal is to achieve non-discrimination of passengers with regard to transport conditions offered by carriers and non-discrimination and assistance for persons with disabilities and persons with reduced mobility. Even though they impose stricter liability of maritime carriers which means a greater financial burden on them and on insurers in the event of accident, the EU has adopted these regulations and created comprehensive protection of passengers in carriage by sea.

As far as Croatian law is concerned, the maritime carriage of passengers and their luggage in Croatia is regulated by the Croatian Maritime Code 2004. Amendments to the CMC of 2013 harmonised Croatian legislation on the maritime carriage of passengers with Regulation 392/2009, while solutions from Regulation 1177/2010 were incorporated in Croatian legislation in 2013 through the Amendments to the Act on Transport in Liner and Occasional Coastal Shipping. Although great effort has been made for the purpose of achieving complete passenger protection, some issues are still waiting to be solved. Regardless of all the accomplishments in providing persons with disabilities the chance to enjoy all the rights they deserve, they are still facing insuperable barriers in everyday life. Travelling by sea, unfortunately, is one of them. Being aware of this, Croatia adopted at the end of 2019 new Amendments to the Act on Transport in Liner and Occasional

Coastal Shipping, granting free transport to persons with disabilities and persons with reduced mobility, to passenger cars licensed to persons with disabilities and to their accompanying persons. Even though these legal changes brought long-desired improvement to the rights of persons with disabilities and of persons with reduced mobility when travelling by sea, legislation in itself is not enough to resolve their problems. Therefore, this privilege should be considered simply a steppingstone until Croatian shipping companies provide a sufficient number of appropriate ships in the coastal liner service.

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#### **Sažetak:**

### **PRIMJENA UREDBE 1177/2010 U REPUBLICI HRVATSKOJ – ŠTO JOŠ MOŽEMO UČINITI ZA PUTNIKE S INVALIDITETOM I OSOBE SMANJENE POKRETLJIVOSTI?**

*Osobe s invaliditetom i osobe smanjene pokretljivosti svakodnevno se suočavaju s diskriminacijom. Iako je u posljednjem desetljeću velik napor uložen da bi se njihova prava poboljšala, još ima mjesta za napredak. Radi unapređenja zaštite i prava putnika tijekom prijevoza morem, Europska unija (EU) usvojila je Uredbu 392/2009 i Uredbu 1177/2010. Uredba 392/2009 inkorporira relevantne odredbe Protokola iz 2002., uz Atensku konvenciju o prijevozu putnika i prtljage morem iz 1974. godine, ali, ujedno, sadržava i neka dodatna rješenja da bi se postigla jedinstvena i odgovarajuća zaštita svih putnika na razini EU-a. Uredba 1177/2010, s druge strane, utvrđuje pravila za prijevoz putnika morem i unutarnjim plovnim putovima čija je temeljna svrha osigurati jednake uvjete prijevoza za sve putnike te jednaka prava i pomoć za putnike s invaliditetom i osobe smanjene pokretljivosti. Donošenjem ovih propisa EU je omogućio sveobuhvatnu zaštitu putnicima u pomorskom prijevozu, pridajući posebnu pažnju upravo osobama s invaliditetom. Republika Hrvatska uskladila je svoje nacionalno zakonodavstvo, u dijelu u kojem se ono odnosi na prijevoz putnika morem, s Uredbom 392/2009 izmjenama Pomorskog zakonika 2013. godine, dok je rješenja Uredbe 1177/2010 implementirala u hrvatsku legislativu kroz izmjene Zakona o prijevozu u linijskom i povremenom obalnom pomorskom prometu, također, 2013. godine. Potkraj 2019. godine navedeni je zakon ponovno revidiran pa*

*su posljednjim izmjenama prava putnika s invaliditetom i osoba smanjene pokretljivosti dodatno unaprijeđena.*

**Ključne riječi:** *osobe s invaliditetom; osobe smanjene pokretljivosti; prava putnika; pomorski prijevoz; Uredba 392/2009; Uredba 1177/2010; Pomorski zakonik Republike Hrvatske; Zakon o prijevozu u linijskom i povremenom obalnom pomorskom prometu.*