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CURRENT AFFAIRS IN PASSENGERS RIGHTS PROTECTION IN THE EUROPEAN UNION

ABSTRACT

Developed passenger transport includes new issues related to liability issues as well as issues of passenger rights protection. The protection of passengers rights is carried out in accordance with the provisions of international treaties, European and national legislation. Carriers are liable for passengers (in case of death, injury) and their luggage (loss, damage) and in some cases for delay so passengers may be entitled to compensation. The protection of passengers rights is imperative in the creation of transport law regulations as set out by the Commission in the 2001 White Paper – ‘European transport policy for 2010: time to decide’.

The European Union has recognized the need for wider protection of passengers rights and has adopted a series of regulations and directives aimed at protecting the interests of passengers and strengthening their rights in all modes of transport (road, rail, air, maritime and inland waterways). Application of EU passenger rights legislation should be uniformed. In order to increase the number and frequency of passenger transport, appropriate regulations are needed. European rules pay special attention to better organization, accessibility and transportation for disabled persons and persons with reduced mobility. The rights of passengers in multimodal transport should be also appropriately regulated.

Despite the great efforts and the existence of these rules, there are still some open questions, legal gaps, problems in implementation and application of rules as well as problems regarding exercising passenger rights. In this paper, we will look at existing problems, obstacles to more efficient application of the Regulations and make recommendations for further action and amending legislation in order to increase the protection of the passengers rights.

Keywords: *passenger rights protection, application of the Regulations, harmonization of rules, European Union, transport law*

1. INTRODUCTION

Transport of persons by land, air, sea or inland waterways is a complex and demanding task for every carrier.¹ Modern passenger requires punctuality, regularity, comfort, speed, economy, and above all safety while traveling. In order to meet the high demands of their passengers, withstand the competition, comply with the development of modern technology, carriers must constantly adapt to new circumstances. No less important are the more frequent changes of legislation that emphasizes the obligation to protect the passengers, and with which they must adjust their business. The main carrier's obligations under the contract of carriage of passengers are: the carriage of passengers and the preservation of their physical integrity. Since the passenger is a weaker party to the transport contract, all passengers should be granted a minimum level of protection. Carriers are liable for passengers (in case of death, injury) and their luggage (loss, damage) and in some cases for delay so passengers may be entitled to compensation.

Transport policy plays an important role in strengthening the economic and social development of the European Union. The protection of passengers rights is imperative in the creation of transport law regulations as set out by the Commission in the 2001 White Paper – 'European transport policy for 2010: time to decide'.² In latest EU documents, there is increased accent on the protection of passenger rights in all modes of transport. The EU legislation on passenger rights seeks to provide passengers with a minimum and harmonized level of protection for all modes of transport in order to facilitate mobility and encourage the use of public transport.³ The protection of passengers rights is carried out in accordance with the provisions of international treaties,⁴ European and national legislation. The

¹ Statistical data are also reported about developed passenger traffic: „In 2015, total passenger transport activities in the EU-28 by any motorized means of transport are estimated to amount to 6 602 billion pkm or on average around 12 962 km per person. This figure includes intra-EU air and sea transport but not transport activities between the EU and the rest of the world. Passenger cars accounted for 71.5% of this total, powered two-wheelers for 1.9%, buses & coaches for 8.2%, railways for 6.7% and tram and metro for 1.6%. Intra-EU air and intra-EU maritime transport contributed for 9.8% and 0.3% respectively.“ European Commission, *Statistical pocketbook 2017, 2.3 Performance of passenger transport (pkm)*,

[https://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2017_en] Accessed 24 March 2018

² COM (2001) 370 final

³ Vasilj, A., Činčurak, Erceg, B., *Prometno pravo i osiguranje*, Sveučilište Josipa Jurja Strossmayera, Pravni fakultet Osijek, 2016, p. 175

⁴ The international treaties contain an individual right to compensation for damage. “In case of disagreement between passenger and carrier the issue needs to be assessed in court in the light of the individual circumstances. By contrast, the EU passenger rights regulations do not take into account individual damage, but provide for a more direct and collective protection of passengers to alleviate trouble

European Union has recognized the need for wider protection of passengers rights in all modes of transport (road, rail, air, maritime and inland waterways) especially of disabled persons and persons with reduced mobility. Conditions and criteria are set for possible compensation, re-routing or ticket reimbursement, as well as assistance (meals, accommodation). In the protection of passenger rights there are some new issues that need to be regulated such as passenger rights in multimodal transport.

Delays, flight cancellations, luggage damage, or even lost luggage are commonly caused in transport, and there are often damages to the physical integrity of the passengers. Then numerous questions arise: I have the right to compensation? Who can I ask it from? What is the procedure? Do I have any further rights? It is not our intention to analyse in detail the provisions of all relevant international treaties, European and national legislation, relating to the liability of the carrier for damage on the passenger and its luggage as well as the rights of the passengers as there is extensive literature⁵ about it. However, the most important rules will be briefly listed for a better understanding of the paper. In this paper we will look at the deficiency of the existing legislation, the application of existing rules, obstacles to more efficient application of the Regulations, problems in practice and make proposals to amend regulations or solving problems.

2. PASSENGER RIGHTS IN THE EUROPEAN UNION

EU passenger rights are adapted for all modes of transport. “There are some differences that relate to national exemptions or the amount and basis of compensation. But in essence, the rights that apply to all types of transport are comparable. They are based on three key principles: non-discrimination; accurate, timely and

and inconvenience, where the standardised and immediate types of redress are defined by objective, measurable criteria, such as the duration of the delay, the ticket price or the distance of the journey.” Communication from the Commission to the European Parliament and the Council, A European vision for Passengers: Communication on Passenger Rights in all transport modes, COM (2011) 898 final, p. 12

⁵ E. g. see Bolanča, D., *Prometno pravo Republike Hrvatske*, Sveučilište u Splitu, Pravni fakultet, Split, 2016; Primorac, Ž., Barun, M., *Zaštita prava putnika u kopnenom prijevozu*, Sveučilište u Splitu, Pravni fakultet, Split, 2016; Vasilj, A., Činčurak, Erceg, B., *Prometno pravo i osiguranje*, Sveučilište Josipa Jurja Strossmayera, Pravni fakultet Osijek, 2016; Činčurak, B., *Odgovornost prijevoznika za štete na tjelesnom integritetu putnika i prtljazi prema odredbama hrvatskog Pomorskog zakonika iz 2013. godine*, Poredbeno pomorsko pravo, Vol. 54, No. 169, 2015, pp. 409–442; Vasilj, A., *Jačanje pravnog položaja putnika - potreba usklađivanja nacionalnih propisa s međunarodnim konvencijama i propisima Europske unije*, Pravni vjesnik, Vol. 27, No. 1, 2011, pp. 25-55; Radionov, N., et al., *Europsko prometno pravo*, Zagreb, Sveučilište u Zagrebu, Pravni fakultet, 2011; Pavić, D., *Pomorsko imovinsko pravo*, Split, Književni krug, 2006; Grabovac, I., *Suvremeno hrvatsko pomorsko pravo i Pomorski zakonik*, Književni krug, Split, 2005

accessible information; immediate and proportionate assistance. These principles are the foundation for ten basic rights that form the core of EU passenger rights policy.”⁶ These ten rights are: right to non-discrimination in access to transport, right to mobility - access and assistance for disabled passengers and passengers with reduced mobility, right to information,⁷ choice to cancel trips due to disruption, right to the fulfilment of the transport contract in case of disruption - rerouting or rebooking,⁸ assistance in event of long delay, right to compensation under certain circumstances, carrier liability towards passengers and their luggage, easy complaint handling, and effective enforcement rights.⁹ In continuation of the paper we will display current affairs in passengers rights protection in all modes of transport.

2.1. Passenger rights in road transport (bus and coach)

The rights of passengers in road transport are regulated by the Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004.¹⁰ Passengers who travel by bus and coach as part of a package trip enjoy additional rights under Directive (EU) No 2015/2302.¹¹ The Regulation (EU) No 181/2011 according to Article 2(1), applies to passengers travelling with regular services for non-specified categories of passengers where the boarding or the alighting point of the passengers is situated in the territory of a Member State and where the scheduled distance of the service is 250 km¹²

⁶ European Commission, *Transport infographics: 10 passenger rights however you travel*, [https://ec.europa.eu/transport/facts-fundings/infographics/zero-to-ten_en] Accessed 15 March 2018

⁷ Passenger rights to information cover: general information on issues like rights and obligations while travelling, on accessibility of services for disabled passengers and passengers with reduced mobility and on carrier quality standards and performance; specific information on the journey throughout the trip (before purchase, before and during the journey as well as in case of disruption)

⁸ The right to choose between reimbursement or rerouting is unconditional in all modes and it intervenes in all events, even in case of extraordinary circumstances

⁹ Communication from the Commission to the European Parliament and the Council, A European vision for Passengers: Communication on Passenger Rights in all transport modes, COM (2011) 898 final, p. 3-4

¹⁰ [2011] OJ L 55. It became applicable on 1 March 2013

¹¹ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC [2015] OJ L 326

¹² Passengers travelling irrespective of the scheduled distance of the service also have same core rights: non-discriminatory transport conditions; access to transport for people with disabilities or reduced mobility at no additional cost; minimum rules on the travel information provided to all passengers before and during their journey including information on their rights; a complaint handling mecha-

or more. It regulates the compensation and assistance in the event of accidents (death or personal injury to passengers and loss of or damage to luggage (Article 7), immediate practical needs of passengers following the accident (Article 8)), rights of disabled persons and persons with reduced mobility¹³, passenger rights in the event of cancellation or delay (continuation or re-routing to the final destination, reimbursement of the ticket price, information, assistance), enforcement,¹⁴ complaints.

The Report on the application of Regulation (EU) No 181/2011¹⁵ of 2011, states that the Commission has not identified any deliberate or serious breaches of the Regulation and considers that there is no justification for amending it. However the Commission had find some problem regarding its application: passengers and operators are not sufficiently aware of their rights and obligations, enforcement is lagging behind in some Member States, difficulty in interpreting certain provisions. As a result, the Commission took some measures to address these issues. It remains to be seen how this will affect the protection of the rights of passengers in the future.

Surveys carried out in several Member States show that passengers using this mode of transport tend to be vulnerable, as they are often on low incomes or live in geographically isolated areas.¹⁶ Therefore we consider that the consistent application of the Regulation (EU) No 181/2011 is extremely important in order to protect this group of people. When we are talking about passengers rights when traveling bus and coach, it should be noted here that the EU has not harmonized rules on

nism that carriers must make available to all passengers; and independent national enforcement bodies in each Member State, which have the mandate to enforce the Regulation and, where appropriate, to impose penalties

¹³ In this place we must look at Article 12 which prescribes that Member States shall designate bus and coach terminals where assistance for disabled persons and persons with reduced mobility shall be provided. In practice, such provision has been implemented in an inappropriate manner. According to Report on the application of Regulation (EU) No 181/2011 “The approach taken by Member States varies: some of the larger and more highly populated Member States have designated only one or a very small number of terminals, which does not correspond to either the size of the country or the volume of passengers carried by buses and coaches.” (Report from the Commission to the European Parliament and the Council Report on the application of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, COM (2016) 619 final, p. 8)

¹⁴ The Regulation requires Member States to designate national enforcement bodies (NEBs), which are responsible for enforcing the Regulation and laying down effective, proportionate and dissuasive penalties in their national law, in order to sanction operators that breach the Regulation

¹⁵ Report, *op. cit.* note 13. from the Commission to the European Parliament and the Council, Report on the application of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, COM (2016) 619 final

¹⁶ *Ibid.*, p. 3

liability for damages for death and personal injury and for damage to luggage, and that there are different solutions in national legislation of the Member States. This does not contribute to the unification of the rules therefore we stress that the existing legislation should be changed.

2.2. Passenger rights in railway transport

Protection of passengers rights in rail transport is regulated by Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations¹⁷. The Regulation is part of the so-called 'third railway package'¹⁸ that aims to improve the quality of rail transport. The Regulation applies to all rail journeys and services throughout the Community provided by one or more railway undertakings licensed in accordance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (Article 2(1)).

The Regulation (EC) No 1371/2007 establishes rules regarding: the information to be provided by railway undertakings; the conclusion of transport contracts, the issuing of tickets and the implementation of a Computerised Information and Reservation System for Rail Transport; the liability of railway undertakings and their insurance obligations for passengers and their luggage; the obligations of railway undertakings to passengers in cases of delay; the protection of, and assistance to, disabled persons and persons with reduced mobility travelling by rail; the definition and monitoring of service quality standards; the management of risks to the personal security of passengers¹⁹ and the handling of complaints, and general rules on enforcement.

The liability of the railway undertakings according to the Regulation (EC) No 1371/2007 is regulated by reference to the application of the provisions of Uniform rules concerning the Contract for International Carriage of Passengers and

¹⁷ [2007] OJ L 315. It entered into force on 3 December 2009

¹⁸ Commission of the European Communities, Communication from the Commission - Further integration of the European rail system: third railway package, COM (2004) 140 final

¹⁹ In contrast to the Regulations covering other transport modes, Regulation (EC) No 1371/2007 defines that adequate measures to ensure passengers' personal security must be taken. According to Article 26 "In agreement with public authorities, railway undertakings, infrastructure managers and station managers shall take adequate measures in their respective fields of responsibility and adapt them to the level of security defined by the public authorities to ensure passengers' personal security in railway stations and on trains and to manage risks. They shall cooperate and exchange information on best practices concerning the prevention of acts, which are likely to deteriorate the level of security."

Luggage by Rail (CIV)²⁰ where the CIV contains the provisions on the liability of railway undertakings in respect of passengers and their luggage, liability for delays, missed connections and cancellations. Regulation independently defines the responsibility for additional rights that are not regulated by CIV. In cases of delays the Regulation provides for certain conditions and additional rights - reimbursement and re-routing (Article 16), compensation of the ticket price (Article 17), assistance (meals, refreshments, accommodation (Article 18)).

Commission in its Report on the application of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations²¹ concludes that: the overall application and enforcement of the Regulation is satisfactory. Despite the overall positive picture certain Member States and railway undertakings need to take additional efforts to improve application and enforcement. Regulation allows Member States to exempt the majority of their railway services from most of its provisions, so the Commission considers the extensive use of exemptions as a serious obstacle to the fulfilment of the Regulation's objectives. Besides, in 2013, the Court of Justice of the European Union ruled in Case C 509/11 *ÖBB-Personenverkehr AG*²² that the current Article 17 of the Regulation does not allow for railway undertakings to be exempted from compensating passengers for delays caused by *force majeure* which distinguishes rail from other transport modes. For these reasons, the Commission published in 2017 Proposal for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations²³ that seeks to amend Regulation (EC) No 1371/2007. The Commission's proposal updates the existing rules on rail passenger rights in five key areas: 1. uniform application of the rules; 2. information and non-discrimination (improved provision of information about passenger rights, discrimination on the basis of nationality or residence is prohibited); 3. better rights for persons with disabilities or reduced mobility; 4. enforcement, complaint-handling procedures and sanctioning; 5. proportionality and legal fairness (a *force majeure* clause will exempt rail companies from having

²⁰ Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999

²¹ Report from the Commission to the European Parliament and the Council: Report on the application of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, COM (2013) 587 final

²² Case C-509/11 *ÖBB-Personenverkehr AG* [2013]

²³ COM (2017) 548 final - 2017/0237 (COD)

to pay compensation in the event of delays caused by natural catastrophes).²⁴ The proposal aims to ensure similar levels of passenger protection across the EU by reducing national exemptions.

The EU regulations on the rights of passengers in rail transport implement the solutions of international conventions. This leads to a high degree of unification and better legal protection in compensation claims. However, taking into account the above mentioned, we agree that amendments to Regulation aimed at better protection of passengers should be supported.

2.3. Passenger rights in maritime and inland waterways navigation

Protection of passengers rights in maritime and inland waterways transport is also regulated with a few regulations. 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 accidents²⁵ lays down harmonised rules on liability and insurance for shipping companies carrying passengers by sea. It covers liability of the carrier in respect of passengers, their luggage and their vehicles, as well as mobility equipment Regulation (EC) No 392/2009 incorporates the provisions of the Athens Convention on the carriage of passengers and their luggage by sea 1974, as amended by the Protocol of 2002 and International Maritime Organisation (IMO) Reservation and Guidelines for Implementation of the Athens Convention, adopted by the Legal Committee of the IMO on 19 October 2006 into European law. It covers the scope of the Athens Convention, but is extended to carriage of passengers by sea within a single Member State on board ships²⁶ of Classes A and B under Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships. However, it does not apply to inland waterways services.

At present there is no international treaty that regulates inland waterway transport of passengers. So the national legislation will be applied, which will lead to non-harmonized solutions. “The absence of an international agreement regulating the carriage of passengers and their luggage by inland waterways is unacceptable.

²⁴ European Commission, *European Commission modernises European rail passenger rights*, [https://ec.europa.eu/transport/themes/passengers/news/2017-09-28-european-commission-modernises-european-rail-passenger-rights_en] Accessed 12 March 2018

²⁵ [2009] OJ L 131. It became applicable on 18 December 2012

²⁶ Where: the ship is flying the flag of or is registered in a Member State; the contract of carriage has been made in a Member State; or the place of departure or destination, according to the contract of carriage, is in a Member State. According to Article 2 of the Regulation No 392/2009 Member States may apply this Regulation to all domestic seagoing voyages

Although the number of passengers transporting by inland waters is relatively small, an international treaty should be made. Such treaty will contribute to the harmonization of this matter.”²⁷ Once again we point out that this arrangement of inland waterways navigation is unsatisfactory. In the Member States usually a single regulation govern maritime law and navigation of inland waterways, which in our opinion is not good solution. Therefore we propose, in such cases, to separate regulations governing the liability of the carrier for damage to inland waterways navigation from those relating to maritime law, in order to facilitate the search of relevant regulations as well as legal certainty. In any case, this liability for the passenger and its luggage should be regulated at the European level, since the arrangement under the international treaty has failed.

Moreover, Regulation (EU) No 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 2006/2004²⁸ provides additional protection to passengers.²⁹ This Regulation, pursuant to Article 2(1), applies in respect of passengers travelling: a) on passenger services where the port of embarkation is situated in the territory of a Member State; 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; c) on a cruise where the port of embarkation is situated in the territory of a Member State, with defined exceptions. The Regulation follows solutions from the regulations governing the carriage of passengers in bus, coach and rail transport: obligations of carriers and terminal operators in the event of interrupted travel³⁰ (information in the event of cancelled or delayed departures (Article 16), assistance in the event of cancelled or delayed departures (Article 17), re-routing and reimbursement in the

²⁷ Činčurak Erceg, B., *Legal framework of European inland waterways and Croatian legislation on inland waterways navigation – problems of non-harmonized rules*, European Scientific Journal, Vol. 14, special edition, 2018, p. 52-53

²⁸ [2010] OJ L 334. It became applicable on 18 December 2012

²⁹ Passengers who travel by ship as part of a package trip enjoy additional rights under the Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, [2015] OJ L 326

³⁰ The Regulation does not regulate cases of denied boarding on the ship (except for disabled persons and persons with reduced mobility), because it was found during consultation with representatives of the industry of the carriage of passengers by sea and inland waterways that almost no cases of denied boarding have been recorded, especially due to the higher number of reservations than the ship's capacity (overbooking). Bulum, B., *Prava putnika u pomorskom prijevozu prema Uredbi Europske unije broj 1177/2010*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 62, No. 4, 2012, pp. 1087

event of cancelled or delayed departures (Article 18), compensation of the ticket price in the event of delay in arrival (Article 19), etc. This Regulation also pays special attention to rights of disabled persons and persons with reduced mobility.

According to the Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004,³¹ the Commission has not detected any deliberate, severe or systematic non-compliance with the Regulation. The Commission identified the following obstacles to more efficient application of the Regulation: passengers and operators are not sufficiently aware of their rights and obligations, enforcement is lagging behind in some Member States, difficulty in interpreting certain provisions³² and thus had taken some measures to address these issues. We support all further efforts to increase the protection of passengers rights of and in these modes of transport.

2.4. Passenger rights in air transport

Today, air transport is one of the busiest and statistically safest ways to travel. Transport of passengers in air traffic is largely of an international character. Globally, The European Union is leading the way with its passenger rights policy. However, mostly in the rest of the world it has been left to individual states to look after air passengers who are often not aware of their rights (if there are any).

In case of denied boarding and of cancellation or long delay of flights, passengers until recently had no institutionalized protection. Solving their travel problems at one of the airports in the EU have been dealt on *ad hoc* basis, depending on the discretion of the air carrier and without the possibility of appeal or complaint to any of the institutions besides the air carrier that caused such an incident.³³

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91,³⁴ establishes minimum rights for passengers when: a) they are denied boarding against their will; b) their flight is cancelled; c) their flight is delayed (Article 1(1)). The Regulation according to

³¹ COM (2016) 274 final

³² *Ibid.* p. 9

³³ Radionov, N., Kocijan, I., *Prava putnika u slučaju uskraćenog ukrcanja, otkazanog leta ili dužeg kašnjenja leta (II. dio)*, Hrvatska pravna revija, Vol. 9, No. 10, 2009, p. 28

³⁴ [2004] OJ L 46. It became applicable on 17 February 2005

Article 3(1) applies to: a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies; b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.³⁵ Similar as other regulations on passenger rights it consist provisions regarding: denied boarding (Article 4), cancellation of a flight (Article 5), delay (Article 6), right to compensation (Article 7), right to reimbursement or re-routing³⁶ (Article 8), right to care (Article 9), placing passengers in higher or lower class (Article 10), persons with reduced mobility or special needs³⁷ (Article 11), obligation to inform passengers of their rights (Article 14), etc.

While ensuring a high level of passenger protection, Regulation 261/2004 is at the same time a constant source of many discussions, doubts, disputes and arguments that create legal uncertainty that undermines the rights of passengers in air transport and leads to numerous disputes between air carriers and passengers. We can say that the Court of Justice of the European Union had their hands full when it comes to air transport.³⁸ Numerous opinions and judgments (such as Case *The Queen, on the application of IATA and European Low Fares Airline Association v Department for Transport*,³⁹ Case *Friederike Wallentin-Hermann v Alitalia - Linee Aeree Italiane SpA*,⁴⁰ Joined cases *Sturgeon v Condor Flugdienst GmbH and Stefan*

³⁵ On the condition that passengers: (a) have a confirmed reservation on the flight concerned and, except in the case of cancellation, present themselves for check-in as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time; or b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason. (Article 3(2))

³⁶ About re-routing see more in Serrat Bech., J. M., *Re-Routing under the Air Passenger's Rights Regulation*, Air and Space Law, Vol. 36, No. 6, 2011, pp. 441-451

³⁷ In order to establish rules for the protection of and provision of assistance to disabled persons and persons with reduced mobility travelling by air, to protect them against discrimination and to ensure that they receive assistance, the Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air [2006] OJ L 204 was adopted

³⁸ „Some 15 rulings have been adopted by the CJEU in this area, which have had a major impact on the interpretation of Regulation 261/2004 by national enforcement bodies (NEBs) and national courts. The rulings apply directly and are therefore legally binding on airlines.“ Truxal, S., *Air Carrier Liability and Air Passenger Rights: A Game of Tug of War*, Journal of International and Comparative Law, Vol. 4, No. 1, 2017, p. 111

³⁹ Case C-344/04 *The Queen, on the application of International Air Transport Association and European Low Fares Airline Association v Department for Transport* [2006] ECR I-00403

⁴⁰ Case C-549/07 *Friederike Wallentin-Hermann v Alitalia - Linee Aeree Italiane SpA*. [2008] ECR I-11061

Böck and Cornelia Lepuschitz v Air France SA,⁴¹ Case *Andrejs Eglītis and Edvards Ratnieks v Latvijas Republikas Ekonomikas ministrija*,⁴² Joined Cases *Emeka Nelson and Others v Deutsche Lufthansa AG and TUI Travel plc and Others v Civil Aviation Authority*,⁴³ Case *Denise McDonagh v Ryanair Ltd.*⁴⁴ etc.) have largely expanded the understanding of some of the rights that actually led to the extension of passenger rights, and some have even complicated⁴⁵ the application of the Regulation 261/2004.

In 2007 the Commission issued a Communication⁴⁶ where the main shortcomings related to the application of the Regulation 261/2004 were identified with a set of remedial measures, and again in 2011 Communication on the application of Regulation 261/2004⁴⁷ that showed how the provisions of the Regulation were being interpreted in various ways, due to grey zones and gaps in the current text⁴⁸, and that the enforcement varied between Member States. Consequently, in 2013 the Commission tabled its Impact Assessment and a proposal for the revision of the Regulation No 261/2004.⁴⁹ The Proposal aims to: ensure effective and consistent enforcement of passenger rights (clarify key principles, ensure effective and consistent sanctioning as well as effective handling of individual claims and

⁴¹ Joined cases C-402/07 and C-432/07 *Christopher Sturgeon, Gabriel Sturgeon and Alana Sturgeon v Condor Flugdienst GmbH* (C-402/07) and *Stefan Böck and Cornelia Lepuschitz v Air France SA* (C-432/07) [2009] ECR I-10923

⁴² Case C-294/10 *Andrejs Eglītis and Edvards Ratnieks v Latvijas Republikas Ekonomikas ministrija* [2011] ECR I-03983

⁴³ Joined Cases C-581/10 and C-629/10 *Emeka Nelson and Others v Deutsche Lufthansa AG and TUI Travel plc and Others v Civil Aviation Authority* [2012]

⁴⁴ Case C-12/11 *Denise McDonagh v Ryanair Ltd.* [2013]

⁴⁵ Air passengers as well as the national enforcement bodies do not always know how to apply these rulings outside the specific context of the case law. „This has led to divergent interpretations of the rules and hence divergences of application/enforcement of the Regulation across Member States.“ European Commission, *Roadmap Interpretative Guidelines on Regulation N°261/2004 on Air Passenger Rights*, 2016, p. 2

⁴⁶ Communication from the Commission to the European Parliament and the Council pursuant to Article 17 of Regulation (EC) No 261/2004 on the operation and the results of this Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, COM (2007) 168 final

⁴⁷ Communication from the Commission to the European Parliament and the Council on the application of Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, COM (2011) 174 final

⁴⁸ *Op. cit.* note 45, p. 1

⁴⁹ Proposal for a regulation of the European Parliament and of the council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, COM (2013) 130 final - 2013/0072 (COD)

complaints), better take into account the financial capacities of the air carriers, ensure better enforcement of passenger rights with regard to mishandled baggage and to adapt liability limits in accordance to general price inflation. “Member States have not yet reached a common view on the proposal. This is mainly due to (i) divergences of views as regards the balance between passengers’ and airlines’ interests and (ii) the ongoing dispute over the Gibraltar airport between two Member States. In any case, the revised Regulation on Air Passenger Rights is not expected to enter into force within the next years.”⁵⁰ Therefore, the Commission adopted Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002⁵¹ of the European Parliament and of the Council⁵² to facilitate and improve the application of the Regulation and to promote best practices. With the interpretative guidelines, the Commission aims to explain more clearly a number of provisions contained in the Regulation, in particular in the light of the Court’s case-law, so that the current rules can be more effectively and consistently enforced.⁵³

In any case, a difficult task to amend the existing Regulation follows. We emphasize that during its amendment it should be noted that the provisions on the protection of passengers should be clear to every passenger in order to easily and clearly understand them if needed.

2.5. Passenger rights in multimodal transport

Current EU passenger rights legislations exist for all modes of transport but regulate each mode separately. Therefore these rules cannot be applied in the context of multimodal passenger transport (when different modes of transport are used by a passenger one after the other to complete one journey). Passenger rights cannot be guaranteed when an event occurring during one transport segment affects the

⁵⁰ *Op. cit.* note 45, p. 2

⁵¹ Regulation (EC) No 889/2002 aligns EU legislation on air carriers’ liability in respect of passengers and their luggage with the provisions of the Montreal Convention of 1999, to which the EU is one of the contracting parties, and extends the application of the Convention’s rules to air services provided within the territory of a Member State

⁵² [2016] OJ C 214, C/2016/3502

⁵³ *Ibid.* p. 6

following one if the latter segment is operated with another mode of transport because no legislation applies in this case.⁵⁴

The European Commission published an Inception Impact Assessment on the rights of passengers in multimodal transport on 22 December 2016.⁵⁵ Passengers using multimodal services have inadequate protection of their rights, especially: if as a result of a transport disruption in the context of a single contract of carriage, the passenger misses the connecting service provided by another mode of transport, his or her rights are not adequately protected; the passengers cannot seek compensation from National Enforcement Bodies because those authorities do not have a legal basis to deal with complaints related to multimodal journeys; assistance is not guaranteed for passengers with disabilities using multimodal products at the connecting points: on the basis of the current modal passenger right EU legislation, carriers are only obliged to provide assistance in relation with their own modal services, but not during the multimodal connection.⁵⁶ In order of better protection of passengers in multimodal transport, the European Commission started open public consultation in 2017. In 2018, the Commission puts the emphasis on multimodality and announces working towards a legislative framework to protect passenger rights in multimodal journeys.⁵⁷ We consider that the rights of passengers in multimodal transport certainly need to be addressed. Thus we propose the adoption of new rules for the multimodal transport of passengers. We are aware that this will probably be a long process, but since a large number of passengers combine different modes of transport on their journey, the legislation needs to be aligned with new needs and provide these passengers adequate protection and safety.

3. CONCLUSION

Reliability, safety, information and ease of access are essential for developed passenger transport. Ensuring a high level of protection of passenger rights, including of passengers with reduced mobility, is very important part of transport policy.

⁵⁴ European Commission, *Public consultation on a possible initiative at EU level in the field of passengers rights in multimodal transport*, [https://ec.europa.eu/transport/themes/passengers/consultations/2017-pax-rights-multimodal-transport_en] Accessed 20 March 2018

⁵⁵ European Commission, *Inception Impact Assessment*, [http://ec.europa.eu/smart-regulation/roadmaps/docs/2017_move_005_passenger_rights_multimodal_transport_en.pdf] Accessed 24 March 2018

⁵⁶ *Ibid.*

⁵⁷ European Commission, *Logistics and multimodal transport, 2018 - Year of Multimodality*, [https://ec.europa.eu/transport/themes/logistics-and-multimodal-transport/2018-year-multimodality_en] Accessed 24 March 2018

Today passengers have efficient and significant rights when the carrier breaches the contract and fails to fulfil its obligations. However, what is guaranteed by legislation, in practice, does not have to be carried out. Therefore there is a need for education of passengers about their rights and carriers about their obligations.

A greater number of journeys in different modes of transport should be encouraged by an appropriate combination of passenger rights. Passengers achieve the protection of their rights through international treaties, EU passenger rights legislation and national legislation. In all modes of transport except road (bus and coach), liability in the case of death and physical injury, and for damage on luggage is covered by international treaties that are transposed into EU law: Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June and Regulation (EC) No 1371/2007 in rail transport, the Athens Convention on the carriage of passengers and their luggage by sea 1974, as amended by the Protocol of 2002 and Regulation (EC) No 392/2009 in maritime transport; the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) of 1999 and Regulation (EC) No 889/2002 in air transport.

EU passenger rights are adapted for all modes of transport (road, rail, air, maritime and inland waterways) and the relevant provisions of the main regulations (Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport, Regulation (EC) No 1371/2007 on rail passengers' rights and obligations, Regulation (EU) No 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, Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights) and reports on their application were presented in the paper. Nevertheless, a number of rights are not yet completely and correctly implemented. Passengers are not aware of the rights they have, or they give up the exercise of rights. National authorities (NEBs) still apply the law in different way. We emphasise that inconvenience experienced by passengers due to cancellation or significant delay of their journey should be reduced. There is no EU legislative framework *de lege lata* regarding the protection of passengers' rights in a multimodal context, thus we propose the adoption of new rules for the multimodal transport of passengers. Further action should be also taken to guarantee the right of mobility of people with disability and reduced mobility. In order to provide passengers with disabilities or reduced mobility with appropriate assistance,

all staffed terminals with significant passenger flow should be designated as being able to assist passengers.

There are some differences between regulations in different modes of transport. This different application and enforcement of the Regulations creates confusions, legal uncertainty, does not contribute to the unification of the rules and ultimately weakens passengers' rights. We agree that amendments to Regulation aimed at better protection of passengers should be supported. At the amendment process the legislator must take into account that provisions on the protection of passengers rights should be clear to every passenger in order to easily and clearly understand them if needed.

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