

# PROTECTION OF PASSENGERS' RIGHTS IN THE EUROPEAN UNION

**Prof.dr.sc. Jasenko Marin**  
University of Zagreb  
Faculty of Law  
Trg maršala Tita 3, 10 000 Zagreb, Croatia  
jmarin@pravo.hr

## ABSTRACT

Ten years ago, in the EU White Paper „European transport policy for 2010: time do decide“, the Commission clearly announced that users of transport system need to be put back at the heart of the transport policy, regardless the mode of transport. It has been pointed out that new specific measures are needed so that passengers can both know their rights and enforce them.

Significant legislative instruments have been adopted at EU level in recent years aiming to ensure that passengers benefit from the same level of protection. At the EU level, separate rules dealing with passengers' rights have been established for each mode of transport (rail, air and road transport, maritime and inland navigation). New passengers' rights have been established, carriers' obligations imposed and a significant body of jurisprudence developed.

The objective of the paper is to analyse the existing EU legislation in this field.

## 1 INTRODUCTION

Protection of passengers assumes a prominent place in EU transport law and policy. Over the last decade, the European Union has increasingly devoted much of its attention towards passengers' rights and its legal protection. The European Commissions' intension was to ensure equality of rights for passengers across all modes. Separate rules dealing with passengers' rights have been established for each mode of transport. The legal framework for users of all transport modes at EU level has been completed in February 2011, after the adoption of regulation on rights for bus and coach passengers. That means that the European Union has established the first integrated area of passengers' rights for all modes of transport in the world. This paper represents an overview of EU passengers' rights in each mode of transport.

## 2 TRANSPORT BY AIR

The biggest part of the air passengers' rights is regulated by the Regulation 261/2004 which specifies the obligations of the air carrier (services and compensation) toward the passenger if the flight does not take place as scheduled.<sup>1</sup>

Beneficiaries of the Regulation 261/2004 are:

- passengers using a scheduled air transports and charter flights departing from an airport located in an EU Member State;
- passengers using a flight departing from an airport located in a third country to an airport situated in an EU Member State, when an EU carrier operates the flight (article 3).

---

<sup>1</sup> 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, OJ L 46, 17.2. 2004, p. 1. The Regulation is in force since February 17 2005.

The Regulation 261/2004 proclaims that the passengers are entitled to compensation as well as to assistance in case of denied boarding, cancellation or long delay. [1]

## **2.1 Rights in the event of denied boarding**

The Regulation 261/2004 defines “denied boarding” as a refusal to carry passengers on a flight, although they have presented themselves for boarding in time and there are no reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation.

If the number of passengers exceeds the number of available seats (overbooking), the air carrier has to call for volunteers that would surrender their places in exchange for agreed benefits. Who renounces voluntarily has the right to negotiate compensation with the air carrier. This compensation may be higher or lower than the one that passengers, who did not renounce voluntarily, are entitled to.

If an insufficient number of volunteers come forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will. These passengers are entitled to assistance, meals and refreshments, alternative transport or reimbursement of the ticket price, reimbursement of the costs in case of missed connecting flight and to immediate payment of compensation; all in accordance with the rules applying in case of cancellation of a flight (see *infra* 2.2).

## **2.2 Rights in the event of cancelled flight**

Under the Regulation 261/2004, “cancellation” means the non-operation of a flight which was previously planned and on which at least one place was reserved. Passengers who are informed of the cancellation at the airport have the choice between reimbursement of the costs of the ticket, or re-routing to the final destination. In case the passenger renounces the re-routing to the final destination, the air carrier has to reimburse him the full cost of the ticket. Moreover, he has the right to receive compensation amounting to:

- EUR 250 for all flights of 1500 kilometres or less;
- EUR 400 for all intra-EU flights of more than 1500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;
- EUR 600 for all flights not falling under abovementioned flights.<sup>2</sup>

The compensation has to be paid in cash, by electronic bank transfer, bank orders, bank cheques or, with the signed agreement of the passenger, in travel voucher.

The operating carrier shall not be obliged to pay compensation if he can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, such as political instability, meteorological conditions incompatible with the operation of the flight, security and security risks. Based on the practice of the European Court of Justice, technical shortcomings at planes are not covered anymore by the concept of “extraordinary circumstances”.<sup>3</sup> However, a concluding list of these extraordinary circumstances exonerating air carriers from their responsibility to pay compensation does not exist.

---

<sup>2</sup> It should be noticed that, when passengers are offered re-routing to their final destination on an alternative flight, and the arrival time of which does not exceed the scheduled arrival time of the flight originally booked by two hours (in respect of all flights of 1 500 kilometres or less); by three hours (in respect of all intra-EU flights of more than 1500 kilometres and for all other flights between 1 500 and 3 500 kilometres); or by four hours (in respect of all flights not falling under abovementioned flights), the operating air carrier may reduce the compensation provided by 50% (Article 7). Moreover, if the passenger is informed of the cancellation at least two weeks before scheduled time of departure (or even later, but with the prescribed re-routing offer), he shall not be entitled to compensation (Article 5).

<sup>3</sup> Wallentin-Hermann v Alitalia - Linee Aeree Italiane SpA (Case C-549/07) of 22 December 2008.

The air carrier is bound to offer the passenger a re-routing, under comparable transport conditions, to their final destination at the earliest opportunity. Only at the passenger's own request and subject to availability of seats the flight can take place at a later date. Agreed with the passenger, a flight to another close-by destination could also be offered. If the flight is no longer serving any purpose, the parts of the journey already made have to be reimbursed.

In the event of cancellation the air carrier has to offer free meals and refreshment just as in case of delay (see *infra* 2.3). Where the alternative flight takes place only the next day a hotel accommodation (including the transport) has to be offered as well.

### **2.3 Rights in the event of delay**

For the purposes of the Regulation 261/2004 a flight is considered as delayed only if the departure time is at least:

- two hours later than scheduled in the case of flights of 1 500 kilometres or less;
- three hours later than scheduled in the case of all intra-EU flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres;
- four hours later than scheduled in the case of all flights not falling under any of abovementioned flights.

In case of delay of least two hours passengers are entitled to free meals as well as refreshments. In addition, they have the right to make two phone calls free of charge or to send two faxes, telex or e-mails to inform others about the delay. In event of delay of least five hours the passengers may demand a reimbursement of the full ticket price within seven days - no matter how long is the flight distance. If due to the long delay the passenger's original travel plan does no longer serve any purpose, the airline has to organise a return flight to the first point of departure. Furthermore, where the stay of one or more nights becomes necessary the air carrier has to offer hotel accommodation as well as the transport between the airport and the hotel. If the passenger misses his connecting flight as a result of delay, he is entitled to demand a reimbursement of the costs for this missed connecting flight as well as the price of parts of the flight already made. In addition, he will get free of charge a return flight to the first point of departure, if desired.<sup>4</sup> [1]

### **2.4 Rights in the event of death of or bodily injury to a passenger and in the case of damage to baggage**

The basis for the rules regulating these issues is the Convention for the Unification of Certain Rules for International Carriage by Air, 1999 (Montreal Convention). The European Union is a Party to Montreal Convention. The Montreal Convention is implemented by the Regulation (EC) No 889/2002.<sup>5</sup> There are no financial limits to the carrier's liability for passenger injury or death. For damages up to 113 100 Special Drawing Rights (approximately EUR 150 000) the air carrier cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault. If a passenger is killed or injured, the air carrier must make an advance payment (at least EUR 20 000), to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. The air carrier is liable for destruction, loss or damage to

---

<sup>4</sup> In the joined cases of *Sturgeon v Condor*, and *Bock v Air France* (c-402/07 and c-432/07) the Fourth Chamber of the European Court of Justice held on 19 November 2009 that despite nonexistence of express provision in the Regulation 261/2004 to compensate passengers for delay, passengers are entitled to the compensation as set out in Article 8 for any delay in excess of three hours. Under such circumstances they may be treated as passengers whose flights are cancelled and enjoy same rights.

<sup>5</sup> Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2927/97 on air carrier liability in the event of accidents, (2002) OJ L 140, 30.5.2002, p. 2.

baggage up to 1131 Special Drawing Rights (approximately EUR 1280). In the case of checked baggage, it is liable even if not at fault, unless the baggage was defective. In the case of unchecked baggage, the carrier is liable only if at fault.

## **2.5 Rights of disabled passengers and passengers with reduced mobility**

This topic is regulated by the Regulation No 1107/2006.<sup>6</sup> It assures that disabled passengers or passengers with reduced mobility have opportunities for air travel comparable to those of other citizens when departing from airports within the EU. In accordance with the Regulation 1107/2006 air carriers are not allowed to refuse booking or transport of passengers on the grounds of their disability or lack of mobility except for reasons which are justified on the grounds of safety. The passengers affected should be met at the information, be accompanied to the check-in counter, through the security, passport, and customs check until the passenger holding area. On flights that start at an EU airport the air carrier has to provide certain services free of charge (transportation of wheelchairs or guide dogs). Passengers must be accompanied to the next aircraft (for connecting flights) or to the baggage claim area and help to carry the baggage to the designated point of departure must be provided. Air passengers who wish to engage the assistance have to let the air carrier or tour operator know this at least 48 hours before.

## **3 TRANSPORT BY SEA AND INLAND WATERWAYS**

The protection of maritime and inland waterway passengers is based on the Regulation (EU) No 1177/2010.<sup>7</sup> The Regulation shall apply from 18 December 2012 in respect of passengers travelling:

- on passenger services where the port of embarkation is situated in the territory of a Member State;
- 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 an EU carrier;
- on a cruise where the port of embarkation is situated in the territory of a Member State.<sup>8</sup>

---

<sup>6</sup> 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, OJ L 204, 26th July 2006, p. 1.

<sup>7</sup> 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 2006/2004, OJ L 334, 17.12.2010, p. 1.

<sup>8</sup> By contrast, the Regulation 1177/2010 shall not apply in respect of passengers travelling on ships certified to carry up to 12 passengers; on ships which have a crew responsible for the operation of the ship composed of no 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 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. Member States may, for a period of 2 years from 18 December 2012, exempt from the application of the Regulation seagoing ships of less than 300 tons operated in domestic transport, provided that the rights of passengers under the Regulation are adequately ensured under national law. Member States may exempt from the application of the Regulation passenger services covered by public service obligations, public service contracts or integrated services provided that the rights of passengers under the Regulation are comparably guaranteed under national law.

### **3.1 Rights of passengers in cases of cancelled or delayed departures**

In the case of a cancellation or a delay in departure, passengers shall be informed by the carrier or 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, and of the estimated departure time and estimated arrival time.

Where a carrier reasonably expects the departure of a passenger service to be cancelled or delayed for more than 90 minutes beyond the scheduled time of departure, passengers shall be offered free of charge meal and refreshment, provided they are available or can reasonably be supplied. In the case of a cancellation or a delay in departure where a stay of one or more nights becomes necessary, the carrier shall offer passengers free of charge adequate accommodation on board, or ashore. For each passenger, the carrier may limit the total cost of accommodation, not including transport to and from the port terminal and place of accommodation, to EUR 80 per night, for a maximum of three nights.<sup>9</sup> Moreover, the passenger shall immediately be offered the 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;
- reimbursement of the ticket price and a return service free of charge to the first point of departure, at the earliest opportunity.

The payment of the reimbursement shall be made within 7 days, in cash, by electronic bank transfer, bank order or bank cheque. Where the passenger agrees, the reimbursement may also be paid in the form of vouchers and/or other services.

### **3.2 Rights in the event of delay in arrival**

In the event of delay in arrival at the final destination, the passenger is entitled to the minimum amount of compensation (25% of the ticket price) for a delay of at least:

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

If the delay exceeds double the abovementioned time, the compensation shall be 50% of the ticket price. It shall be paid in vouchers and/or other services, or in money, but only at the request of the passenger.<sup>10</sup>

However, the passenger shall not be entitled to compensation:

- if 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; or
- if the passenger is informed of the cancellation or delay before the purchase of the ticket or if the cancellation or delay is caused by the fault of the passenger (Article 20).

If the passenger 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.<sup>11</sup>

---

<sup>9</sup> However, if the carrier proves that the cancellation or delay is caused by weather conditions, endangering the safe operation of the ship, he shall not be obliged to offer accommodation.

<sup>10</sup> Carriers may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 6.

### **3.3 Rights of disabled passengers and passengers with reduced mobility**

The Regulation 1177/2010 addresses the issue of non-discrimination and assistance for disabled persons and persons with reduced mobility (Articles 7-15). These persons enjoy similar rights as provided in air transport (see *supra* 2.5).<sup>12</sup>

### **3.4 Rights in the event of death of or bodily injury to a passenger and in the event of damage to baggage**

These issues are covered by the Regulation (EC) No 392/2009.<sup>13</sup> This Regulation incorporates in EU law provisions of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (Annex I to the Regulation). It also makes binding parts of the IMO Reservation and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the International Maritime Organization (Annex II to the Regulation). The Regulation 392/2009 is applicable only in respect of maritime passengers (but not in respect of passengers in inland navigation).

Under the Regulation 392/2009 the carrier who actually performed the carriage when the shipping incident occurred shall make an advance payment sufficient to cover the immediate economic requirements proportional to the damage suffered, within 15 days from the identification of the person entitled to damages. In the event of death, this payment shall not be less than EUR 21000. The provision in respect of advance payment shall apply if the incident occurred within the territory of a Member State, or occurred onboard a ship flying the flag of a Member State or is registered in a Member State. It will also apply if the carrier is established within the EU.

Under the influence of the 2002 Athens Protocol, the Regulation prescribes a two tier liability system in cases where death of or personal injury to a passenger is caused by a shipping incident. The carrier is liable for the death of or personal injury to the passenger up to the limit of SDR 250 000 (EUR 260 000) per passenger on any individual occasion, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and unavoidable character; or was wholly caused by an act or omission performed by a third party with the intent of causing the incident. Therefore, the 2002 Protocol introduces strict liability of the carrier for the death of or personal injury to the passenger up to the abovementioned limit (the first tier of liability).

If the loss caused by the shipping incident exceeds the limit of SDR 250 000 per passenger on any distinct occasion, the carrier is further liable - up to a limit of 400 000 SDR (EUR 416 000) per passenger on each distinct occasion - unless the carrier proves that the

---

<sup>11</sup> 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 considered. The time taken to provide the final reply shall not be longer than 2 months from the receipt of a complaint (Article 24).

<sup>12</sup> The Regulation 1177/2010 also regulates the issue of non-discrimination between passengers with regards to transport conditions offered by carriers as well as the minimum travel information to be provided to passengers.

<sup>13</sup> 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, OJ L 131, 28.5. 2009, p. 24. The Regulation shall apply from the date of the entry into force of the Athens Convention for the EU and in any case from no later than 31 December 2012. It shall apply to any international carriage and to carriage by sea within a single Member State onboard ships covered by Class A and B in accordance with Article 4 of Directive 98/18/EC, if the ship is flying the flag of or is registered in a Member State, or 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. In respect of carriage by sea within a single Member State on board ships of Class A, Member States may choose to defer application of this Regulation until four years after the date of its application. In respect of carriage by sea within a single Member State on board ships of Class B, Member States may choose to defer application of the Regulation until 31 December 2018.

incident which caused the loss occurred without the fault or neglect of the carrier (the second tier of liability). [2]

In respect of compensation for lost or damaged baggage, the Regulation 392/2009 also adopts relevant provisions contained in the 2002 Athens Protocol.<sup>14</sup>

## **4 TRANSPORT BY RAIL**

The Regulation 1371/2007 establishes a package of rights for rail passengers and requires greater responsibility of rail undertakings towards their customers.<sup>15</sup> This Regulation concerns all rail journeys and services provided under licence by one or more rail undertakings under Directive 95/18/EC.<sup>16</sup> National as well as international train journeys within EU are affected by the Regulation.<sup>17</sup> Furthermore, an extract from Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV, Appendix 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) forms Annex I of the Regulation.

### **4.1 Rights in the case of delay, cancellation and missed connection**

Once a delay of at least 60 minutes is foreseeable, the passenger shall immediately have the choice between:

- reimbursement of the full cost of the ticket or of parts of it that have not been made yet or that have already been made, if the journey is no longer serving any purpose in relation to the passenger's original travel plan. Furthermore, the passenger is, where applicable, eligible for a return service to the first point of departure at the earliest opportunity;
- continuation of the journey or re-routing under comparable conditions to the final destination at the earliest opportunity (or at a later date, at the passenger's convenience).

If the passenger continues his journey despite a delay, he may claim a minimum compensation equivalent to:

- 25% of the ticket price for a delay of 60 to 119 minutes;
- 50% of the ticket price for a delay of 120 minutes or more.

The compensation of the ticket price is paid within one month after the submission of the request for compensation at the latest. It will be paid in vouchers and/or other services.

---

<sup>14</sup> For the cabin baggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect shall be presumed for loss caused by a shipping incident. In respect of other baggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier. His liability is limited as follows: 2 250 SDR for cabin baggage; 12 700 SDR per vehicle and 3 375 SDR in respect of other baggage, all per passenger, per carriage.

<sup>15</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ L 315, 3.12.2007, p. 14. It has entered into force on 3.12.2009. This Regulation is a part of so-called third railway package in the railway sector. This package is supposed to encourage competition in cross-border passenger transportation as well as to standardise the locomotive driving license throughout the EU.

<sup>16</sup> Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings, OJ L 363, 20.12.2006, p. 344.

<sup>17</sup> Member States may, on a transparent and non-discriminatory basis, grant an exemption on their national railway traffic for a period no longer than five years, which may be renewed twice for a maximum of five years on each occasion. It may also exempt urban, suburban and regional rail passenger services from this Regulation. However, provisions on carrier's liability in respect of passengers and luggage (Article 11), right of passengers with reduced mobility (Article 19) information on accessibility of rail services (Article 20,1) have to be applied mandatory in the sector of national and cross-border railway traffic.

The compensation is paid in money only at the request of the passenger. The passenger shall not have any right to compensation if he is informed of a delay before he buys a ticket, if a delay due to continuation on a different service or re-routing remains below 60 minutes or if the amount of reimbursement accounts for less than EUR 4.

Furthermore, in the case of a delay in arrival or departure, passengers have the right to meals and refreshments with reasonable limits (i.e. delay of at least 60 minutes), accommodation where a stay of one or more nights becomes necessary due to a delay of at least 60 minutes or a cancellation, transport to the departure or arrival point if the train is blocked on the track. If the railway service cannot be continued anymore, the company has to organise alternative transport services as soon as possible.

It is important that the carrier shall be relieved of any obligation, when the cancellation, late running or missed connection is attributable to the one of the following causes:

- circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required could not avoid and the consequences of which he was unable to prevent;
- fault on the part of the passenger; or
- the behaviour of a third party which the carrier, in spite of having taken the care required, could not avoid and the consequences of which he was unable to prevent.<sup>18</sup>

#### **4.2 Rights of disabled passengers and passengers with reduced mobility**

Railway companies and station managers have to establish non-discriminatory access rules for the transport of disabled persons and persons with reduced mobility. These persons shall be, upon their request, informed about the access conditions. Furthermore, railway companies shall provide disabled persons and persons with reduced mobility assistance free of charge on board a train and during boarding and disembarking from a train. Assistance shall be provided on condition that the railway company, the station manager, the ticket vendor or the tour operator with which the ticket was purchased is notified of the person's need for such assistance at least 48 hours before the assistance is needed. If a time is arranged to which the disabled person or the person with reduced mobility is supposed to arrive, this shall not be more than 60 minutes before published departure time. If no time is stipulated, the person shall present himself at least 30 minutes before the published departure time.

Apart from general rule in respect of passenger's baggage, the rail company is completely liable for the total or partial loss of or damage to, mobility equipment or other specific equipment used by disabled persons or persons with reduced mobility. [3]

#### **4.3 Rights in the event of death of or personal injury to a passenger and in the event of damage to baggage**

In the case of death of or bodily injury to a passenger during the carriage, the rail carrier is, within 15 days, bound to advance payments that meet the costs for the immediate needs of the affected passenger or his dependants.

The EU regulation stipulates that carrier is liable for personal injuries up to an amount of 175 000 Special Drawing Rights. However, Member States may also elevate that maximum limit of liability.

If the carrier is liable for lost, damaged or delayed baggage, he shall compensate the passenger up to prescribed limits.<sup>19</sup>

---

<sup>18</sup> CIV, Article 32. Another undertaking using the same railway infrastructure shall not be considered as a third party.



## **5 TRANSPORT BY ROAD**

The most recent legal instrument dealing with the subject of this paper is Regulation No 181/2011 regulating the protection of passengers in bus and coach transport.<sup>20</sup> The Regulation 181/2011 shall apply from 1 March 2013 to all regular services for non-specified categories of passengers with a scheduled distance of more than 250 kilometres. It means that passengers only travelling a part of such a long-distance service are also covered.<sup>21</sup>

### **5.1 Rights in the event of cancellation or delay**

If a journey is cancelled, delayed for more than two hours or overbooked, the carrier must offer a choice between:

- continuation of the journey, or re-routing to the final destination, at no additional cost and under comparable conditions, as set out in the transport contract, at the earliest opportunity,
- reimbursement of the ticket price, and, where relevant, a return service by bus or coach free of charge to the first point of departure, at the earliest opportunity.

If the carrier fails to do so, the passenger has a right to compensation amounting to 50% of the ticket price, in addition to the reimbursement.

Where a journey of more than three hours is cancelled or delayed in departure for more than 90 minutes, assistance must also be offered in the form of the provision of snacks, meals of refreshments, as well as hotel accommodation up to a limit of EUR 80 per night and per person for a maximum of two nights. However, accommodation needs not to be provided if the cancellation or delay is due to severe weather conditions or major natural disasters.

Irrespective of the duration of the delay, passengers are to be informed of the situation at the latest 30 minutes after the scheduled departure time, at their request.

In the event of a breakdown of a vehicle during the journey, the carrier has to ensure continuation with another vehicle or transport to a suitable waiting point.

### **5.2 Rights of disabled persons and persons with reduced mobility**

Similar to regulation in other transport modes, disabled persons and persons with reduced mobility must not be refused transport except for safety reasons or for lack of necessary infrastructure. Assistance is to be provided at specific terminals and on board, subject to prior notification (36 hours in advance). An accompanying person has the right to be carried free of charge, if the presence of this person is needed for the carrier to accept the disabled person on board. Loss of or damage to wheelchairs or other equipment has to be fully compensated.

---

<sup>19</sup> For damaged hand baggage limit of carrier's liability is 1400 SDR per passenger; for registered baggage 80 SDR per kg or 1 200 SDR per piece of baggage (without proof of precise damage 20 SDR per kg or 300 SDR per piece); for delayed registered luggage 0,80 SDR per kg and day or 14 SDR per piece (without proof of precise damage: 0,14 per kg or 2,80 SDR per piece).

<sup>20</sup> 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, 28.2.2011, OJ L 53, p. 1.

<sup>21</sup> Specific provisions of the Regulation are applicable even if the scheduled distance of the service is shorter than 250 kilometres (provisions on non-discrimination, rights of disabled persons and persons with reduced mobility, rights regarding travel information, rules on national enforcement bodies). A transitional exemption of four years, renewable once, may be granted for particular regular transport lines with countries outside the EU, as well as for domestic regular services. Occasional services are subject to the rules on compensation and assistance in the event of accidents and on compensation for the loss of or damage to mobility equipment.

### **5.3 Rights in the event of death of or personal injury to a passenger and in the event of damage to baggage**

Just like in other transport modes, in the case of accidents passengers (or other persons, in accordance with applicable law) are entitled to compensation. In this respect limits for compensation under national law must not be lower than the minimum amounts set in the Regulation 181/2011, that is EUR 220 000 per passenger, and EUR 1200 per piece of baggage. Moreover, assistance is to be provided to cover passengers' immediate practical needs after an accident, including food, clothes, transport, the facilitation of first assistance, and accommodation up to a limit of EUR 80 per night and per person for a maximum of two nights. All other issues of liability are to be dealt with in accordance with national law and the existing EU legislation.<sup>22</sup>

## **6 CONCLUSIONS**

Generally, EU passengers in all modes of transport enjoy high level of protection. Their rights are basically regulated by transport legal instruments. However, it should be kept in mind that various legal sources of consumer law are also applicable as well as the rules on tour-operators' liability.<sup>23</sup> Some of these rights are: the right on minimum information to be provided, the right in cases of cancellation or delay of transport (including re-routing and/or compensation), the non-discrimination between passengers with regard to transport conditions offered by carriers, rights in respect of compensation in the event of death of or personal injury to a passenger as well as in the event of damage to baggage.

Relevant legal instruments in each mode of transport contain provisions imposing on carriers and other relevant bodies the obligation to ensure that passengers are provided with precise instructions regarding enforcement of their rights. Each legal instrument imposes on each Member State a duty to designate a special body responsible for the enforcement of passengers' rights.

However, some issues are still waiting to be solved, such as the carrier's liability in respect of passengers by inland waterways as well as the uniform regulation on the principles of carrier's liability for passengers in the carriage by bus and coach.

Another equally difficult task is the implementation of these regulations. Some recent examples (volcanic ash) show that job has not been entirely done. However, there is no doubt that these regulations represent sources of new established EU passenger law.

## **REFERENCES**

1. N. Radionov, I. Kocijan, "Prava putnika u slučaju uskraćenog ukrcanja, otkazanog leta ili dužeg kašnjenja (II. dio)", *Hrvatska pravna revija*, god.IX, 2009., br. 10, str. 28-37.
2. J. Marin, "Carriage of Passengers Carried by Sea in the Case of Accidents", Proc. Int. Conf on Traffic Science 2008, Portorož, Slovenia, May 28-29, 2008, Fakulteta za pomorstvo in promet, Portorož, 2008, p.1-10.
3. M. Mudrić, "Treći željeznički paket: otvaranje tržišta međunarodnog prijevoza putnika te prava i obveze putnika u međunarodnom prijevozu", Publication of the 3<sup>rd</sup>

---

<sup>22</sup> That solution is set in the Regulation 181/2011 as the only one possible, taking into account of diverging legislation on this subject in different Member States.

<sup>23</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990. p. 59 contains significant number of relevant provisions. Most of transport instruments elaborated in this paper contains special provisions that they do not affect the rights of passengers established by this Directive.

International Scientific and Expert Railway Infrastructure Managers Congress (RIMC), Zagreb, 2007, p. 1-14.