



ORIGINAL PAPER

On the legal regulation of the air transport contract for persons from Romanian law

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Abstract

Air transport has as legal regulation O.G. no. 29/1997 regarding the Air Code. This regulation contains legal norms on general aspects regarding the national airspace and its legal regime, thus creating a legal general framework for air transport. The regulated aspects concern more public law than private ones. However, if we refer to the private law and the law applicable to air transport contracts, the subject matter is represented by the Convention for the unification of certain rules regarding international air transport, adopted in Montreal on May 28, 1999, a convention that applies to international passenger transport, luggage or cargo, carried by an aircraft, against payment, and also free transport by aircraft by an air carrier. This Convention has been ratified by Romania through O.G. no. 107/2000 and approved by Law no. 14/2001. Also, passengers make use of their rights recognized at European level based on Regulation no. 261/2004 of the European Parliament and of the Council of 11 February 2004 setting common rules regarding compensation and assistance of passengers in the event of refusal to board or cancel or delayed flights.

Keywords: *air transport contract for persons; passenger; luggage; flight.*

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Taken as a whole, the legal regulation in the matter of air transport of persons, and of the air transport contract for persons, is a regulation that is configured from several laws in force, namely Government Ordinance no. 29/1997 on the Air Code; The Convention for the Unification of Certain Rules for International Carriage by Air, adopted in Montreal on 28 May 1999; Regulation (EC) no. 261/2004 of the European Parliament and of the Council of February 11th, 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

These special regulations concern both the air transport of goods and transport of persons, and, insofar as they are incomplete, the general regulation of the Civil Code on the transport of persons and luggage is used.

If we conduct a critical analysis of these regulations, we notice that, in the absence of a special law dedicated exclusively to the air contract for persons, the effort to identify legal rules that apply to certain legal situations is more extensive for legal practitioners. On the issues concerning the substantive regulation of certain legal issues concerning the air transport contract, certain legal issues are noted, especially in determining the content of certain terms and notions used in these regulations. Therefore, an analysis of existing regulations in this area highlights a number of issues that need to be reassessed or improved.

Government Ordinance no. 29/1997 on the Air Code. This regulation includes legal rules that provide the general legal framework for the development of air transport in Romania, with its rules comprising mainly aspects of public law, rather than private law. Thus, the subject of these regulations aim at aspects such as: civil aviation administration in Romania, defining the notion of national airspace and use of national airspace, air navigation services, legal relations on board civil aircraft, nationality and rights over civil aircraft, civil airfields, civil aeronautical personnel (Government Ordinance no. 29/1997, art. 32, art. 33), civil air operations (Government Ordinance no. 29/1997, art. 44), public air transport operations, environmental protection and flight safety issues, search and rescue of civil aircraft and technical investigation of aviation incidents and accidents.

The private law rule with impact on the air transport contract for persons is the one referring to the public air transport operations, namely Section II, Chapter VII, Civil air operations from Government Ordinance no. 29/1997 on the Air Code. The air carrier is a professional and it can be a natural or legal person, authorized to carry out domestic or international transport of persons or goods, in public interest or in its own interest, with means of transport owned, rented or leased.

The legal status of the carrier, in general, is ensured by the rules of the Civil Code and of the Government Ordinance no. 19/1997. According to them, the transports performed by legal or natural persons, in non-discriminatory access conditions for third parties, based on a transport contract, for a fee, are transports in public interest, and the transport contract in public interest is concluded between the carrier and the beneficiary, under the terms of the Civil Code. Natural or legal persons carrying out transports of goods and persons, other than those in personal interest, shall be authorized by the Ministry of Transport and Infrastructure (Government Ordinance no. 19/1997, art. 20-22).

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Therefore, it follows from the legal regulations that a transport contract, for a fee or free of charge, can be entered into only by a carrier operating in the public interest, and the capacity as a carrier may belong to a natural or legal person authorized for this purpose by the Ministry of Transport and Infrastructure.

The public air transport operations are, according to art. 45 of Government Ordinance no. 29/1997, the transport of passengers, luggage, cargo or mail, carried out on a commercial basis, by regular or irregular flights, by air carriers.

The article invoked above refers to the relevant international regulations, in the sense that public air transport conducted in the national airspace is subject to the international treaties to which Romania is a party.

The regulation also stipulates that public air transport is conducted on the basis of a transport contract concluded between the air carrier and the beneficiary of the transport; and by the air transport contract, the air carrier undertakes to take the passenger to the destination, in exchange for a price to be paid by the beneficiary of that transport.

Government Ordinance no. 29/1997 on the Air Code sorts into classes civil air operations through its regulations. Thus, the civil air operations that can be performed on the Romanian territory are classified in: public air transport operations, general aviation operations and air work operations.

Public air transport operations may be scheduled transport and irregular transport. Schedules transport, namely public air transport performed by regular flights, is air transport performed according to published schedules and predetermined routes, intended to ensure the connection between two or more airports and where the vacant commercial capacity is made available to the public for a fee. Public air transport, other than regular flights, is operated by scheduled flights. Public air transport by irregular flights also includes flights which do not involve the carriage of passengers between two or more airfields, carried out on a commercial basis, with one or more passengers on board.

General aviation operations are classified in: air transport for personal interest, flights for personal interest, private flights and school flights.

Air transport for personal interest consists in general aviation operations performed by a legal entity, without charging a fee or its equivalent in goods or services, using their own or rented civil aircraft, which is the accessory of another economic activity performed by the beneficiary of transport. Flights for personal interest are those general aviation operations, other than transports for personal interest, performed by natural or legal persons, with their own or rented civil aircraft, to support the needs of their own activities, without charging tariffs. Flights for personal interest include, for instance, flights performed exclusively for sports purposes. Private flights are general aviation operations performed by owners of civil aircraft, individuals, exclusively for non-commercial purposes, and school flights are civil air operations organized by individuals or legal persons for the purpose of training navigating civil aviation personnel.

Air operations, as civil air operations, are civil air operations performed for the needs of industry, agriculture, forestry, public health and environmental protection, search and rescue, scientific research, photography, monitoring, advertising, and for other purposes by air operators certified by the Ministry of Transport, Construction and Tourism.

The liability regime of the air carrier is different: for international public air transport, the regulation is applied in accordance with the international treaties in which Romania is a party, and for domestic public air transport, the provisions of the common law apply, unless otherwise established by a special law or by an international treaty to which Romania is a party.

Therefore, the liability regime of the air carrier is granted for domestic air transport by the provisions of the Civil Code regarding the contract of transport of persons and luggage (Romanian Civil Code, art. 2002-2008), if there is no special rule in this matter, and the liability of the air carrier in the international transport contract for persons is governed by the conventions and agreements in which Romania is a party.

As per art. 47 of Government Ordinance no. 29/1997 on the Air Code, the air carrier is liable for any damage resulting in the death or injury of passengers' health or damage or loss of luggage.

Regarding the legal liability regime of the carrier, the Civil Code stipulates that it is responsible for: the passenger's death, bodily injury or damage to the passenger's health, non-execution of transport, its execution in conditions other than those established, delayed execution of transport. The carrier's liability is contractual and, according to the legal regulation, any clause by which the carrier's liability is removed or restricted for the damages provided in the general law is considered unwritten. At the same time, the carrier is liable for the damage caused by the means of transport used, its state of health and the state of health of its employees. Art. 2004 para. 4 of the Civil Code provides for the situations in which the exoneration from liability of the carrier operates. Thus, it is not liable in the following situations: if it proves that the damage was caused by the passenger, intentionally or through gross negligence; if it proves that the damage was caused by the passenger's state of health; if it proves that the damage was caused by the act of a third party for which it is not liable; if it proves that the damage was caused by force majeure (Atanasiu, Dimitriu, Dobre, 2011: 737).

The doctrine (Piperea, 2013: 199-200) notes that, if we benchmark the liability of the air carrier with that of the carrier provided for in the Civil Code, it is noteworthy that the two types of liability *contradict each other* and that, from this point of view, the liability of the air carrier in domestic transport may be regarded as an *unlimited* liability. In other words, it is a matter of the principle of air carrier liability for any damage caused to the passenger versus the principle of limited liability of the carrier under common law. Government Ordinance no. 29/1997 is the special rule in relation to the Civil Code which is the general rule and it shall apply as a matter of priority to the air carrier and it shall govern its liability.

Romanian air carriers (Government Ordinance no. 29/1997, art. 50) may perform public air transport on domestic or international routes, by regular or irregular flights, only provided that they hold a valid air operator certificate and an operating license, issued by the Ministry of Transport and Infrastructure in accordance with the provisions of EC Regulation no. 1008/2008 of the European Parliament and of the Council of September 24th, 2008 on common rules for the operation of air services in the Community. The exceptions to these legal provisions are established by the Ministry of Transport, Construction and Tourism through specific regulations.

Also, foreign air carriers can perform public air transport in the Romanian airspace, but only in accordance with the traffic rights granted by the Ministry of Transport, Construction and Tourism or under the terms established by the international treaties to which Romania is a party.

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Therefore, the regulations of Government Ordinance no. 29/1997 on the Air Code directly on the air transport contract for persons is characterized by a high degree of generality, in the sense that it establishes only in general terms the coordinates of this contract by: defining public air transport and establishing the types of transport specific to this type of transport, indicating the air transport contract as the mandatory legal instrument through which the transport of persons is performed and defining it by reference to its essential elements - movement of the person and payment of the price by the beneficiary in exchange of the service provided; establishing the liability of the carrier and indicating the regulations governing the liability regime of the air carrier.

The Convention for the Unification of Certain Rules for International Carriage by Air, adopted in Montreal on May 28th, 1999. This Convention applies to all international transport of persons, luggage or goods performed by an aircraft for a fee and to free transport by an aircraft performed by an air transport company, as well.

The Convention for the Unification of Certain Rules for International Carriage by Air, also known as the “Montreal Convention” was signed in Montreal on May 28th, 1999. The European Union is a contracting party to the Convention and some of its provisions have been transposed into Union law by EC Regulation no. 2027/97, as amended by EC Regulation no. 889/2002. These rules are part of a set of measures aimed at protecting the rights of air passengers in the European Union, together with EC Regulation no. 261/2004.

The Member States signatory to the Convention for the Unification of Certain Rules for International Carriage by Air, adopted in Montreal have shown the positive effects of the Convention for the Unification of Certain Rules for International Carriage by Air, signed in Warsaw on October 12th, 1929, to the harmonization of private international aviation law and through this new Convention sought to modernize and continue the beneficial effects of the Warsaw Convention regulations, with the aim of: ensuring full protection of consumer interests in the international air transport, a sustainable development of international air transport operations and the flow of passengers, luggage and goods, a harmonization of certain rules governing international air transport.

At the same time, the provisions of this Convention concerning passengers, luggage and goods alike are in accordance with the principles and objectives of the Convention on International Civil Aviation signed at Chicago on December 7th, 1944.

Article 1 of the Convention clearly sets out its scope, namely the international carriage of persons, luggage or goods by an aircraft, for reward and the concept of international carriage. Thus, for the purposes of the Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. It should also be noted that carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage.

The regulation of the Convention also clarifies in this first article the situation of the successive carriage, in the sense that such a carriage to be performed by several successive carriers is deemed to be one undivided carriage if it has been regarded by the

parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State. As a result, the will of the parties to consider the carriage operation as undivided and not the number of contracts, respectively carriage documents that incorporate this will, prevails.

Depending on the type of means of transport used, the transports can be: transports performed with a single type of means of transport, i.e. successive, and transports in combined traffic. Successive transport is the one performed by two or more successive carriers using the same means of transport, and combined transport is one in which the same carrier or the same successive carriers use different means of transport.

Also in the general rule, respectively the Civil Code, art. 2006 regulates the liability in successive or combined transport. According to it, in the case of successive or combined transport, the carrier on the transport of which the death, damage to the bodily integrity or health of the passenger, loss or damage of luggage or other goods of the passenger occurred is liable for the damage thus caused (Baias, Chelaru, Constantinovici, Macovei, 2012: 2013-2014).

Chapter II of the Montreal Convention, regarding the documents and duties of the parties regarding the transport of passengers, luggage and goods, totals a number of 14 articles, with only one being reserved for passengers and luggage, namely art. 3.

The contract for the international carriage of passengers by air is the contract whereby a party, called the carrier, undertakes, principally, to carry the passenger on time, unharmed and safely (Pop, Popa, Vidu, 2012:33-34), with an aircraft, from one place to another, according to the agreement between the Parties, provided that the point of departure and the point of destination, whether or not there is an interruption of transport or a transshipment, are located either in the territory of two States Parties or in the territory of a single State Party, but in this case there must be a stopover established on the territory of another state; with the transport being executed for a service that the passenger undertakes to pay in return for the carrier's performance.

The freedom to conclude such a contract is, in accordance with the provisions of the Convention, a significant one, in the sense that no provision of the Convention prevents the carrier from refusing to conclude a contract of carriage or from establishing conditions which are not contrary to the provisions of this Convention. However, clauses which exonerate the carrier from liability or set a lower limit than the one laid down by the provisions of the Convention are void, but the nullity of such a clause does not imply the nullity of the entire contract.

With regard to the transport document, the Montreal Convention stipulates that for the transport of persons, an individual transport document or a collective transport document shall be issued, which shall contain: specification of points of departure and destination and whether these points of departure and destination are located in the territory of a single State Party and if one or more stopovers are located in the territory of another State, indicating at least one of these stopovers. At the same time, the carrier must provide passengers with an identification tag for each piece of checked baggage.

According to the Convention, it is also possible to use any other means by which information is recorded on the specification of points of departure and destination which may replace the issue of the transport document. The condition is that, if such a means is used, the carrier shall issue to the passenger a written declaration of the information so recorded.

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The rules governing matters relating to the transport document are instruments, such as the rules governing the form of the contract in common law, non-compliance with their provisions not affecting the existence or validity of the transport contract which will continue to be subject to the rules of the Convention.

With regard to the liability of the air carrier, the Convention provides that the carrier shall be liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

The obligation to carry persons includes, in addition to travel operations, embarking or disembarking operations. As a result, the carrier is liable for both the damage suffered by passengers and their luggage during transport and during embarking or disembarking operations. Liability is contractual in nature, and the doctrine warns of the correct interpretation of this situation: the carrier has the obligation to arrange and use the infrastructure of each means of transport and to ensure safe access to the means of transport and disembarking of the passenger under the same safety conditions. However, these operations should not be mistaken for the passenger's own actions when boarding and getting off the means of transport, performed through their own actions and for which there is a personal liability (Cotuțiu, 2015: 204-205).

Also according to the Convention, namely art. 17, the carrier is also liable for damage caused by the destruction, loss or damage of checked luggage, provided that the event that caused the destruction, loss or damage occurred on board the aircraft or during the period when the carrier was entrusted with the checked luggage. The carrier is not liable if the damage that occurred due to a defect in the luggage, its quality or faults.

The air carrier is liable for the delay in the air transport of passengers and luggage. The carrier shall not be liable for any damage caused by the delay if it proves that it has taken all reasonable steps or its agents or assignees have done so to avoid the damage or that it has been impossible for them to take such actions. Also, if the carrier proves that the damage was caused or facilitated by the negligence or other wrongful act or omission of the person claiming compensation or of the person from whom it derives its rights, the carrier is exonerated in whole or in part from liability to the claimant, if such negligence or any other wrongful act or omission has caused or contributed to the damage.

The legal provisions on liability in the air transport contract for persons under the Montreal Convention and Regulation (EC) No. 261/2004 of the European Parliament and of the Council of February 11th, 2004 are compatible and complementary.

Thus, as regards the requirements to provide compensation for late arrival and assistance in case of late departure, the Court of Justice of the European Union has considered that the loss of time inherent to a delay in flight is an "inconvenience" rather than a "prejudice", as the Montreal Convention calls it. The Court notes that too long a delay causes an almost identical inconvenience to all passengers, and the Regulation provides for standardized and immediate compensation, while the Montreal Convention provides for remedies requiring a case-by-case assessment of the extent of the damage caused and it may only be the subject of subsequent compensation on an individual basis. Therefore, the application of the Regulation takes precedence over the application of the provisions of the Montreal Convention. In other words, the obligation to compensate passengers whose flights are delayed under the Regulation does not fall

within the scope of the Convention but remains additional to the compensation system provided for therein.

With regard to the interpretation of the articles on delay in the Montreal Convention, the Court of Justice of the European Union has held that an air carrier can be held liable under the Convention by an employer if the damage resulted from a delay in flights in which its employees were passengers. Therefore, the provisions of the Convention should be interpreted as applying not only to the damage caused to the passengers themselves, but also to the damage suffered by an employer with whom a transaction has been concluded for the international carriage of a passenger. In its judgment, the Court added that air carriers are, however, guaranteed that their liability cannot be incurred beyond the limit applicable to each passenger, as established by the Convention, multiplied by the number of employees in question.

Regarding the luggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked luggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid an additional amount. In that latter case, the carrier will be liable to pay an amount not exceeding the declared amount, unless it proves that the amount is higher than the passenger's actual interest in delivery at destination.

The Montreal Convention provides that the right to compensation and the limitation of the carrier's liability in the event of destruction, loss, damage or delay of luggage also apply to a passenger claiming such compensation for damage, loss, damage or delay of luggage checked to the name of another passenger, provided that the luggage actually contains the personal belongings of the first passenger. The passenger must, however, prove that their personal belongings were indeed in the checked luggage. It is up to each affected passenger to prove this before a national judge, who may take into account that the passengers are, for example, members of the same family and have bought a ticket together and travelled together. The resulting damage and its extent resulting from the loss of luggage include both pecuniary damage and non-pecuniary damage.

Loss of luggage, as well as delayed return of luggage, can cause passengers who owned it a mental illness because they were deprived of their belongings and as claimants, they can claim material damage, but also moral damage. It is well known that, in the field of contractual liability, non-pecuniary damage is lower than in the field of tortious liability and they cover only certain contractual obligations. Luggage, due to the content of its notion, is subject to an obligation whose non-compliance leads to the claim of moral damages as well, not only to material damages. The judge is the one who, in relation to the factual circumstance, will assess the overall amount to compensate for the consequences of the faulty execution of this obligation (Pap, 2016: 197-203).

The liability of the air carrier shall not be incurred if it is proved that the damage occurred as a result of an action or omission of the carrier, its agents or assignees, made with intent to cause damage or recklessly, and knowingly that it may result in damage, provided that in the case of such actions or omissions of the agents or assignees it is proved that they acted in the performance of their duties.

The receipt without complaint by the consignee of the checked luggage is equivalent to the proof that it has been handed over in good condition and in accordance with the transport document, in the sense that the relative presumption arises that it has been received in the same condition as it was handed over for transport. In the event of

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damage, the passenger must lodge a complaint with the carrier immediately after the damage is discovered and no later than seven days after the date the checked luggage has been received. In case of delay, the complaint must be made no later than 21 days from the date on which the luggage is in its possession. The complaint must be made in writing.

Regulation (EC) no. 261/2004 of the European Parliament and of the Council of February 11th, 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. This Regulation entered into force on February 17th, 2005 and is binding on all Member States of the European Union. Its purpose is to ensure a high level of passenger protection, denied boarding and long-term cancellation or delay of flights which are a nuisance and a frequent occurrence for passengers. The purpose of this Regulation is also to establish common rules on the system of compensation for denied boarding.

Adoption was possible based on the Treaty establishing the European Community, and Article 80 para. 2 respectively. The provisions of the Regulation to which we refer focus on the following aspects: the situation in which passengers are denied boarding against their will, flight cancellation and flight delay; establishing the conditions under which passengers may exercise their minimum rights in this regard.

Regulation no. 261/2004 of the European Parliament is further explained by the *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 889/2002 of the European Parliament and of the Council.*

Following the application of the provisions of the Montreal Convention and Regulation (EC) No. 261/2004 of the European Parliament and of the Council of February 11th, 2004 at European Union level found that certain provisions were often interpreted differently, either because they were insufficiently explained or incompletely regulated. This has led to uneven legal practice between member countries. Moreover, it has been seen that it is sometimes difficult for passengers to claim certain rights.

As I have already mentioned, the case-law has had a decisive impact on the need to clarify certain provisions of the Regulation. The Court of Justice of the European Union has in many cases been referred to national courts to determine the exact meaning of certain legal provisions, sometimes even on essential legal aspects of the Regulation. The Court's interpretative judgments reflect the current state of EU law, and the evaluations carried out in 2010 and 2012 highlighted an abundance of judgments adopted by the Court to clarify the meaning of these regulations. Thus, for a uniform understanding and proper application of the Regulation throughout the EU, to clarify the rights and obligations of the parties, for a better application of the provisions of the Regulation by air carriers and its implementation by domestic law enforcement bodies, the Commission presented a proposal to amend the Regulation. In fact, through these interpretative guidelines, the Commission has set out to explain more clearly the provisions of the Regulation, in line with the vision of the Court of Justice of the European Union, so that the current rules can be implemented in an efficient and uniform manner.

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With regard to denied boarding, the Regulation stipulates that, when an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. The volunteer is a person who shows up for boarding and who agrees, upon the request of the air carrier, to give up their reservation in exchange for an allowance. If an insufficient number of volunteers come forward to allow the remaining passengers to board the flight, the air carrier may then deny boarding to passengers against their will.

If passengers are denied boarding against their will, a right to compensation is created in the passenger's favour and, at the same time, the air carrier must provide assistance.

The right to compensation implies that passengers will receive compensation amounting to: EUR 250 for all flights of 1500 kilometres or less, EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres, EUR 600 for all other flights. In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time

The right to assistance implies reimbursement or re-routing and the right to service. The right to a refund or re-routing means that passengers are given the opportunity to choose between: reimbursement within seven days of the full cost of the ticket, at the purchase price for the part or parts of the journey not performed and for the part or parts already performed, and if the flight becomes useless in relation to the passenger's initial travel plan, together with, if applicable, a return flight to the initial point of departure as soon as possible. They can also choose between: re-routing, under comparable transport conditions to the final destination as soon as possible or re-routing under comparable transport conditions to the final destination at a later date, at the passenger's choice, subject to availability of seats.

The right to service means that passengers are offered free of charge: meals and soft drinks, proportional to the waiting time; hotel accommodation; transport between the airport and the place of accommodation; two free telephone calls and to send free telex, fax or e-mail messages (Regulation No 261/2004 of the European Parliament and of the Council of February 11th, 2004, Art. 7-9).

The interpretation of the notion of "denied boarding" is that it does not cover the situation where there are good reasons for refusing to carry passengers on a particular flight, even though they showed up on time for the flight. Examples of this are: health status, safety or security requirements, and inappropriate travel documents.

If a passenger holding a reservation including a return flight is not allowed to board the return flight because they have not boarded for the departure flight, this does not constitute a denial to board. The same situation is when a passenger holding a reservation that includes consecutive flights is not allowed to board a flight because they have not made the previous trip. These two situations are usually based on the terms and conditions of the ticket purchased. However, such a practice could be prohibited by national law. Likewise, when the initial flight of a passenger with a confirmed reservation is delayed and the passenger is re-routed to another flight, this is not considered denied boarding (Stănescu, 2019: 52-56).

The passenger travelling with a pet is not able to board as they do not have the necessary documentation for the trip with a pet and this cannot be considered as denied

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boarding. However, if passengers are denied boarding as a result of an error by ground staff when verifying their travel documents, including visas, this shall be deemed as denied boarding.

Denied boarding against the will of the passenger gives the right to "compensation", the right to choose between refund, re-routing or a new reservation at a later time and the right to service.

Regarding flight cancellation, passengers must: be offered the right to a refund or re-routing. Also, passengers must be provided with the following free of charge: meals and soft drinks in proportion to the waiting time and two free telephone calls and to send free messages by telex, fax or e-mail; and in the event of a re-routing, if the early departure time of a new flight is at least one day after the scheduled departure for the cancelled flight: free hotel accommodation and free transport between the airport and the place of accommodation.

Also regarding the cancellation of the flight, passengers must be offered the right to compensation. The right to compensation does not operate if: passengers were informed of the cancellation at least two weeks before the scheduled departure time; passengers were informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; passengers were informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

The air carrier shall not be bound to pay compensation, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

The cancellation is defined in the Regulation as representing the non-performance of a previously planned flight for which at least one seat has been reserved. It usually takes place when the planning of the initial flight is abandoned and the passengers of that flight join the passengers on a flight that was also scheduled, but independent of the initial flight. However, the Regulation does not provide that there must be an express decision of cancellation by the carrier.

The Court of Justice of the European Union has ruled that, in principle, it cannot be concluded that there was a flight delay or cancellation on the basis of a delay or cancellation on the airport departure panels or their announcement by the carrier's staff. Also, the fact that passengers recover their luggage or obtain new boarding passes is not usually a decisive factor in determining that the flight has been cancelled. These circumstances are not related to the objective features of the flight as such and may be caused by various factors. The Court has highlighted specific cases in which the announcement of a flight as "delayed" or "cancelled" may be attributed "to errors of qualification or factors prevailing at the airport concerned or may be imposed in view of the waiting time and the need for targeted passengers to spend the night at the hotel."

The notion of "cancellation" also covers the case of an aircraft taking off, but for some reason is subsequently bound to return to the airport of departure, where the passengers of that aircraft are transferred on other flights. The fact that the take-off took place, but the aircraft subsequently returned to the airport of departure without having

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reached the destination provided in the itinerary, has the effect that the flight, as originally scheduled, cannot be considered performed.

At the same time, a diverted flight on which a passenger eventually arrives at an airport which does not correspond to the airport indicated as the final destination in accordance with the passenger's initial travel plan must be treated in the same way as a cancellation, unless: the passenger shall be offered by the airline a re-routing as soon as possible under comparable conditions of transport, to the airport of initial destination or to any destination agreed with the passenger, in which case the flight could eventually be considered delayed or the airport of arrival and the airport of final destination serve the same city or the same region, case in which the flight could eventually be considered as delayed.

The cancellation of a flight gives the right to reimbursement, re-routing or return, the right to service, the right to compensation. Compensation must be paid if the passenger has not been informed of the cancellation sufficiently in advance.

If an air carrier anticipates a flight delay beyond the scheduled departure time, as follows: for two hours or more in the case of flights of 1500 kilometres or less; for three hours or more in the case of all intra-Community flights of more than 1500 kilometres and of all other flights between 1500 and 3500 kilometres; for four hours or more, on all other flights, the carrier is required to provide passengers with meals and refreshments in proportion to the waiting time and two free telephone calls and to send free telex, fax or e-mail messages. If the expected departure time is at least one day after the initially announced departure time, free hotel accommodation and free transport between the airport and the place of accommodation. If the delay is at least five hours, passengers are given the opportunity to choose between: reimbursement, within seven days, of the full cost of the ticket, at the purchase price for the part or parts of the journey not performed and for the part or parts already performed, if the flight becomes unnecessary in relation to the passenger's initial travel plan, together with, if applicable or a return flight to the initial point of departure as soon as possible.

The delay can take place on departure or arrival. If the departure of a flight is delayed, passengers affected by that delay shall be entitled to service, as well as reimbursement and a return flight. The basic principle is that the rights depend on the duration of the delay and the flight distance. In this respect, it should be recalled that the right to re-routing is not taken into account because it can be considered that the air carrier is primarily trying to solve the problem that caused the delay in order to minimize the inconvenience caused to passengers.

The Court of Justice of the European Union has ruled that a delay in arrival of at least three hours confers the same rights on compensation as cancellation. It also considered that the notion of "arrival time", used to determine the duration of the delay suffered by passengers in a flight if arrival is delayed, corresponds to the moment when at least one of the aircraft's doors opens, assuming that at that time of arrival, passengers are allowed to leave the aircraft.

The air carrier (Regulation No. 261/2004 of the European Parliament and of the Council of February 11th, 2004, art. 14) has the obligation to inform passengers of their rights, which consists in ensuring that, in the passenger registration area, a readable ad is displayed, consisting of the following text printed in clear and visible characters: "If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with

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regard to compensation and assistance".

At the same time, the air carrier that denies boarding or cancels a flight has the obligation to hand over to each passenger concerned a written communication specifying the compensation rules to be provided. It shall also provide each passenger affected by a delay of at least two hours with a written notice.

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Article Info

Received: July 24 2020

Accepted: August 24 2020
