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PASSENGER TRANSPORT –THE CHALLENGES IN THE MODERN WORLD²

Abstract

In this paper, the author examines the domestic and international legal framework for the contract of carriage of passengers and its presence in different transport modes and offers a response to the current challenges. The purpose of the paper is to analyze the international and domestic regulations and present the rights and obligations of contracting parties in order to facilitate its application in the emerging practice. The author recognizes passenger transport as a field full of modern challenges caused by novel, still under-researched risks to passengers' health. Special attention is paid to the contract of passenger carriage by rail. The advantages of this transport mode are examined, the obligations of railway carriers and passengers are presented, while the obligation of the railway carrier to accept transporting any interested person if they have vacancies is underlined. The analysis focuses on the significance of the contract of passenger transport in the modern environment where risks to passengers' health are present. The author recognizes passenger transport by rail as a convenient and perspective branch of passenger transport for both international and domestic passenger transport. This sort of passenger transport already has the potential to respond to the challenges of preserving and strengthening the protection of passenger's rights, above all the right to safe and secure transportation.

Key words: *passenger transport, international regulations, domestic regulations*

JEL Classification: *K120, K200*

ПУТНИЧИ ПРЕВОЗ – ИЗАЗОВИ У САВРЕМЕНОМ ОКРУЖЕЊУ

Апстракт

У овом раду аутор разматра питање (домаћег и међународног) правног оквира уговора о превозу путника и његове заступљености у свакодневној пракси према гранама саобраћаја, заједно са одговором на изазове данашњице.

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Циљ рада је да кроз анализу међународних и домаћих прописа, приближи права и обавезе уговорних страна, а све то ради његове лакше примене у новонасталој пракси. Аутор препознаје путнички превоз као погодан терен за изазове данашњице, настале услед нових, још увек недовољно познатих ризика по здравље путника. Посебна пажња посвећена је уговору о превозу путника у железничком саобраћају, предностима оваквог превоза, као и приказу обавеза железничког превозиоца и путника са акцентом на обавезу превозиоца да прими на превоз сако заинтересовано лице уколико располаже слободним местима. Предмет овог рада је значај уговора о превозу путника у савременом окружењу где су присутни нови изазови по здравље путника. Аутор препознаје превоз путника у железничком саобраћају као погодну и перспективну грану путничког превоза за међународни, али и домаћи превоз путника. Ова врста путничког превоза има већ потенцијал у одговору на изазове очувања и јачања заштите права путника, пре свега права на сигуран и безбедан превоз.

Кључне речи: путнички превоз, међународни прописи, домаћа регулатива.

Introduction

Since the beginning of time transportation has played an important role in labour distribution. The development of transportation services has accompanied the development of the state and its social and economic progress. The Roman Empire differentiated between sea and land transport, as can be seen from historical evidence such as fare prices, vehicle descriptions and comparisons, and the documents of transport associations which dealt with transport organization. It is interesting to note that the comparison of prices shows that sea and river transport was much more inexpensive than land transport (Stanković, 2018). One might say that there is similarity in terms of land and water transport cost between today's and ancient states.

What has changed, apart from the fact that transport has been modernized? Is land transport still more expensive? Is there any room for improvement in today's world full of challenges? Today, air transport is expanding, especially in the field of transoceanic passenger transport. It is hard to imagine that, until recently, the only possible mode of transoceanic passenger transport was transport by sea (Carić, 2000). Sea transport for such travel today survives mainly in the form of tourist challenges, cruises, fishing trips or adventure holidays offered by tour operators.

Passenger transport by air has become the dominant form of transoceanic passenger transport, and it is gaining a steady momentum as a form of cargo transport in modern economies. In comparison with water transport, aircraft capacities are yet to be improved. However, the type of goods being transported, their price and delivery deadlines may account for selective advantage of air over sea cargo transport. When it comes to passenger transport it is expected that some other reasons, apart from pricing and efficiency, will encourage passengers to conclude the contract of carriage in other transport branches.

Competition rules in transport market imply that the development of air transport will affect the development of road and rail transport, causing the development of new

transportation vehicles and forms. Passenger safety and health issues will have additional weight when choosing the type of transport. Today's circumstances (both domestic and international) are full of challenges and dangers to passengers' health. Risk assessment is expected to become one of the factors determining passengers' decision on how to reach a destination (either transoceanic or domestic). Is it safer to travel by air or land at a time when various viruses are spreading? Can a passenger exercise his/her rights under the same conditions if health risk occurs in domestic and international passenger transport, be it road or rail, air, sea or river transport? We have witnessed passengers being detained in vehicles (a cruiser, an airplane, a train) due to health measures during the Covid 19 pandemic. Only time can tell what are the advantages of certain passenger transport forms, so that it is logical to expect their current standing to change.

In such circumstances, it is sensible to ask whether the relationship between the price of land and sea transport will remain the same as it was in antiquity. Today, carriage of passengers by rail has certain specificities which will give it a competitive edge over the other passenger transport forms. Until recently, passenger rail transport in Serbia was an adventure – an archaic, sluggish and uneconomical journey. In spite of that, we maintain that passenger transport by land, including both road and rail transport, can be expected to flourish both technically and in terms of passenger safety in the world full of unexpected challenges and health hazards.

Domestic and international regulations

In carriage of passengers, the undertakings conducting their dominant or additional business operations conclude contracts of carriage of passengers and goods. Passenger transport is conducted by cars, buses, mini buses, trains, aircraft, ships, cruise liners and other vehicles, all of which cannot be listed here. Modern development of road, rail, air, sea and river transport depends on technical modernization of vehicles. There are different forms of transport, and various relevant transport contracts:

- contract of carriage of passengers by road
- contract of carriage of passengers by rail
- contract of carriage of passengers by air
- contract of carriage of passengers by sea and inland waterways

To create an environment to conduct modern domestic and international transport, Serbia has ratified almost all significant international conventions in the field of transport. We have created a modern transport legislation, codified by transport branches and international in its character. It is understandable why international conventions and regulations are present in domestic transport law: it is part of a wider transport community within which it operates. It is necessary to be included in a wider community, especially the transport law community, and be aware of the regulations enforced in other countries, but it also important to always underline the international origin of the provisions of transport law (Knežević, 2012).

The common domestic source of law for all transport contracts is the Law on Obligations (The Official Gazette of the Socialist Federal Republic of Yugoslavia, 29/78). Subsidiary application of general sources of law in transport is applicable only when a

given institute of transport law is not fully but only partially regulated by a specific law. It is not possible to provide a unified legal solution for all transport contracts because every transport form is specific. The existence of separate laws for individual transport branches means that these laws behave as *lex specialis*, i.e. they have priority over the Law on Obligations, which is applicable to all transport forms if there is no separate law for an individual transport branch.

Every form of passenger transport contract has its special interior, or domestic and international sources. Domestic sources for passenger transport contracts according to the transport type are as follows: the Law on Road Transport Contracts (Službeni list SRJ, 26/95), the Law on Road Passenger Transport (Službeni glasnik RS, 38/2015), the Law on Rail Transport Contracts (Službeni glasnik RS, 38/2015), the Law on Obligations and Ownership in Air Transport (Službeni glasnik RS, 87/2011, 66/2015), the Law on Shipping (Službeni glasnik RS, 96/2015).

The international sources of law for contracts of passenger carriage according to the transport branch are the ratified international conventions.

The international passenger transport by road is regulated by the Convention on the Contract for the International Carriage of Passengers and Luggage by Road, signed in Geneva on March 1st 1973 (The Official Gazette of Socialist Federal Republic of Yugoslavia, 8/77) and the Convention on the Contract for the International Carriage of Goods, signed on May 19th 1956 (The Official Gazette of People's Federal Republic of Yugoslavia, 8/77). Good business practice also plays a very important role in everyday business conduct.

The international passenger transport by rail is regulated by the Convention Concerning International Carriage by Rail (COTIF), (The Official Gazette of Socialist Federal Republic of Yugoslavia, 8/1984), enacted in 1980, in the form of Appendix A to Unified Rules of CIV (The Official Gazette of Socialist Federal Republic of Yugoslavia, International Contracts, 8/1984), which present part of the COTIF Convention (Đurđev, 2016).

The Convention aimed to establish a unique legal system for the carriage of passengers and goods in direct international transport between the convention member countries. The Convention Concerning International Carriage by Rail, COTIF, was amended by the Vilnius Protocol in 1999 (Službeni glasnik RS, 102/07).

The European Union accepted the COTIF Convention in 2011, so that the Convention became part of *acquis communautaire*. Apart from the Convention, the source of European law regulating carriage of passengers is the Regulation of the European Parliament and of the Council on Rail Passengers' Rights and Obligations (the EU Official Gazette 315/14). Since COTIF Convention and the Regulation the EU Parliament and of the Council pertain to the same area, it is important to determine which of the two sources of law has greater legal strength and priority when regulating the same issue.

It is generally assumed that the international convention shall be applied first, as expressly stated in the Regulation (Đurđev, 2009). The Regulation also resolves issues not mentioned in the COTIF Convention, such as the additional rights of the passengers, strengthening passenger rights through increased availability of information pertaining to transport services and so on. The Regulation establishes rules as regards the information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and the implementation of a computerised information system, the liability of

railway undertakings and their insurance obligations for passengers and their luggage, the obligation of railway undertakings to passengers in cases of delay, the definition and monitoring of service quality standards, the management of risks to the personal security of passengers, and the protection of and assistance to disabled persons with reduced mobility travelling by rail (Damjanović, 2011).

The Regulation gives more rights to passengers in comparison to the solutions of the international convention. Colliding solutions are inadmissible in cogent legal norms of the Convention. From the passengers' point of view, the application of *acquis communautaire* is recommendable. The Regulation strengthens the rights of railroad passengers in order to increase the protection of passengers as consumers. In this manner, it improves the position of passengers, but also increases the competitiveness of railroad transport in relation to other transport branches. It regulates in detail the liability of undertakings in case of passenger death or injury, the passengers' rights in case of delay, as well as protection of disabled persons and assistance provided for them. It deals with passenger rights in case of delay, interruption and cancellation and so on.

The international passenger transport by sea is regulated by the Convention Relating to the Carriage of Passengers and Their Luggage by Sea, the so-called Athens Convention from 1974 (Službeni glasnik RS, 13/2010-48). The Convention relating to the limitation of the liability of owners of inland navigation vessels (CLN) signed in Geneva in 1973, and developed by the Institute for Unification of International Private Law in Rome (UNIDROIT), regulates the international carriage of passengers by inland waterways. International carriage of passengers by air is regulated by the conventions which also regulate the carriage of baggage and cargo: the Montreal Convention (Službeni glasnik RS, 38/2009), the Warsaw Convention (Službeni glasnik Kraljevine Jugoslavije, 124/31), the Hague Protocol (Službeni list FNRJ – International contracts and other agreements, 6/59), the Guadalajara Convention (Službeni list SFRJ – International contracts, 3/78), Guatemala Protocol (Službeni glasnik RS, 38/2009). The Legal board of ICAO proposed the amended text of the Warsaw Convention on the diplomatic conference of ICAO in Guatemala in 1971. The so-called Guatemala Protocol amends certain provisions of the Warsaw Convention and the Hague Protocol by introducing the objective liability of the carrier in case of passenger death and injury, as well as in case of baggage damage.

By introducing the Warsaw and Montreal conventions, the international community attempted to unify the private law provisions regulating the international carriage by air and to achieve higher legal certainty for passengers using air transport. According to the convention, the passenger is entitled to compensation in case of death or physical injury caused by the air crash. This pertains to visible damage caused by air traffic accidents. But, what of the invisible damage caused by an air crash? To this question the answer is somewhat more complex (Radumilo, 2017).

Passenger carriage contract

The Law on Obligation, section 1 of Article 648, defines carriage contracts as contracts which oblige one party – the carrier to deliver the other party – a passenger from the place of departure to the place of destination, while the passenger is obliged to pay the compensation – the fare. The contract of carriage thus obliges the carrier to

transport the passenger to a destination, while the passenger is obliged to pay for the service. The definitions of the contract of carriage which can be found in legal literature specify that this is, according to its legal nature and function, a legal act regulating a concrete legal relationship between definite persons (Goode, 2017). The persons are invariably the carrier as the one side, and the passenger as the other contractual party. It defines the contractual obligation of the carrier to transport the passenger from one place to another, that is from the place of departure to the place of destination, providing the adequate transport and a seat in a vehicle, and the contractual obligation of the passenger to pay the appropriate price as compensation – fare (Trajković, 1985).

The contract of carriage by rail obliges the undertakings to deliver the passenger from departure to destination station, while the passengers are obliged to compensate undertakings for the cost of transport. The undertakings are obliged to transport the passenger to the destination station by means of vehicles of the arranged type and category as specified in timetables and to provide necessary comfort depending on the train type and journey length. The carrier is obliged to provide, when arranged, the designated seat in a specified vehicle, as well as additional services.

The contract of carriage depending on the vehicle type can be defined as the contract of carriage according to transport branches. Depending on the respective locations of the place of departure and the place of destination (whether they are in the same or different states) we differentiate between domestic and international passenger carriage.

The contract on passenger carriage by train is international when it involves transporting passengers from abroad to Serbia and vice versa, as well as when it involves transporting passengers from abroad to another country via Serbian territory. Domestic passenger transport by rail is defined as passenger carriage which begins and ends within the territory of our country. Domestic law also defines international carriage of passengers as transport of passengers from abroad to Serbia and from Serbia abroad, including the carriage of passengers from abroad to another country via Serbian territory.

The contract on passenger carriage by road pertains to domestic transport – transport performed by a domestic carrier between places within the territory of our country.

For a contract of carriage to have international character in road and rail transport, the carriage must involve crossing at least one state border. However, there is the question of the relationship between international and domestic carriage on EU territory, especially when it involves crossing member state borders.

The contract on passenger carriage by air is international when the place of departure and the place of destination are located in different countries, or when they are in the same country, but involve landing in the territory of another country.

The character of the contract of carriage by sea and inland waterways is determined by whether the ports of departures and destination are located in one or more states. In the former case, it is domestic, in the latter – international.

The contract of passenger carriage is concluded between two contractual parties: the carrier and the passenger. The carrier is predominantly an enterprise conducting transport. For that reason, general terms of conduct must be publicly known. The carrier can also be some other person – any person contractually bound to deliver a passenger for compensation. If transport is free of compensation, the carrier loses its legal rights and obligations.

The passenger is the person being transported from one place to the other according to the contract of carriage. The right to transport is acquired by concluding the contract of carriage. Thus, the person who has the contractual right to transport is the passenger. The passenger is defined as natural person who, on account of the contract of carriage or another valid document, occupies the transportation vehicle, is on his/her way in or out of the transportation vehicle, as well as the person who accompanies a vehicle or livestock being transported on account of the contract of carriage for goods (sea shipping or inland waterway shipping).

However, instead of the passenger, the contract of carriage can also be concluded with the carrier by a third person (most frequently the travel agency). In that case, instead of the passenger, the other contractual party is the ordering party. In such cases, the contract of carriage of passengers is concluded between the tourist agency and the carrier, where the travel agency is the mediator or travel organizer.

The contract of carriage need not be concluded in writing. The contract of carriage is informal, so that the ticket issued to the passenger by the carrier has the character of legitimization paper rather than the contract of carriage. In addition to informal contracts on passenger carriage, there are formal contract on passenger carriage by air when one contractual party is the transport ordering party which concludes the contract of carriage instead of the passenger. Such contracts are concluded in writing.

The ticket is proof that the contract on passenger carriage is concluded, although the existence of the contract of carriage can also be proven by other means, bearing in mind that the ticket presents a stronger evidence.

In carriage by air the ticket is issued to a specific name, while in carriage by rail and by road tickets are issued to bearer. In sea and inland waterway shipping tickets can be issued either to the name or to bearer.

Passenger and carrier rights and obligations against the backdrop of modern-world challenges

Passenger carriage by rail currently displays certain specificities and trends which will prove to be advantageous in comparison to other branches of passenger carriage. As mentioned before, until recently travelling by train in Serbia meant an adventurous feat involving an outdated, slow and uneconomical journey. It is time Serbia cast aside such unattractive legacy of passenger carriage by rail. Recent developments have revealed advantages of rail transport. Hazards involved in air travel, shipping and carriage by road, where confined spaces of the vehicles present a risk factor for passenger health, make carriage by rail a much more rational solution. To meet the challenges of the contemporary world, we attempted to single out some obligations and rights of carriers and passengers by rail, and to identify specificities and possible shortcomings in comparison to other forms of transport.

The carrier is obliged to deliver the passenger safely to the place of destination at specified time and according to the arranged deadline, by means of arranged vehicle and respecting the timetable, as specified in general terms and conditions of carrier conduct or in the contract of carriage. Before the transport has begun, the carrier shall provide

information regarding the conditions of carriage, and admit the interested party at the beginning of transport. How the ticket will be issued depends on the transportation type, as explained above. The basic obligation of the carrier is to deliver the passenger safely and on time. In carriage by air, the carrier is obliged to pay penalties if failing to observe the contract.

From the point of view of passenger health hazards, some carriers' obligations are of particular importance. The obligation of the carrier to admit any interested person on board is especially prominent when we are dealing with underresearched diseases. How shall the carrier meet this obligation when anyone can be a potential spreader of disease, and when they can be denied transport in case of random sampling?

According to the Law on Obligation, the carrier is obliged to admit anyone meeting the conditions specified in general terms and conditions. If the carrier's vehicle is insufficient to accommodate all interested persons, the priority is given to persons specified in special legal acts, to those who demanded transport first and, in case of simultaneous demands, to those who travel longer distances.

Since our country is striving to improve and develop passenger transport by train, the legal effect of such contracts is given special attention. The carrier by train and the passenger are contractual parties for contract of carriage informally concluded by the purchase of ticket. The contract of carriage obliges the carrier to deliver the passenger from the station of departure to the station of destination using the type and category of vehicle announced in the timetable and providing the comfort deemed necessary for the type of vehicle and the length of travel. The carrier is obliged to deliver the passenger to the destination. The carrier is obliged to provide the designated seat and additional service for the passenger when specially arranged.

In carriage by rail, the contract of carriage can be concluded with a person who is suffering or suspected to be suffering from a contagious disease only if the conditions defined in the terms of service are met.

If the passenger develops symptoms of one of the contagious diseases specified in the terms of service, the carrier is obliged to respect the stipulations and deliver the passenger to the nearest place where they can get medical assistance.

The carrier by train has the right to refuse to admit the person who if there are grounds for suspicion that the person will prevent the carrier from meeting the provisions of the contract of carriage. This pertains to persons under the influence of alcohol or drugs, persons of indecent behavior or those who do not observe the law. In such cases, the carrier has the right to remove without reimbursement anyone who disturbs other passengers or disobeys the public order regulations.

One may ask whether persons business practice will result in spreaders of disease being added to this list. In our opinion, although such persons may prevent the carrier from meeting the contractual obligations to other passengers, they should remain outside the scope of persons who may be denied carriage. What are the carrier's obligations in case of sudden passenger illness, when the cause of the disease is unknown is the question arising from the novel circumstances in our everyday lives.

Another question pertains to whether the general terms and conditions of transport will become more encompassing or whether this issue will be resolved outside of the carriers' mandate regardless of the fact that the risk is located within their vehicles during the implementation of the contract of carriage to which they are a contractual party. It is

our opinion that carriers can avoid insoluble situations by providing more encompassing information to passengers before and during the transport. The carriers' obligation is to inform the passenger of the general terms and conditions which are part of the contract before the transport and provide information regarding the timetable, the fastest transport mode and the lowest price. There is also special information regarding additional rights of disabled persons in terms of adequate access and space. Additionally, they provide information on whether there is bicycle storageroom, which first and second class seats are available, whether there is room in sleeping cars, which circumstances may result in delays or interruptions, which services are provided on board and passengers' right to complain. During the transport, they provide information regarding the services on the train, announce next stop and possible delays. Information on passenger safety and security during transport is of special importance. This carriers' obligation when there is a potential disease spreader means that carriers will react as a contractual party in the contract of carriage.

The passenger has the obligation to purchase the ticket and pay the fare in all transport modes. The passenger is obliged to purchase the train ticket and pay the fare before the transport begins.

If there is no ticket office in the place of departure, the passenger shall purchase the ticket on the train. The carrier is obliged to make it possible for the passenger to purchase the train ticket on the train, unless it is made impossible due to reservations and other business reasons, in which case the carrier shall inform the passenger on availability of e-tickets or other manners of purchase.

The passenger who fails to purchase the ticket in the place with the ticket office and who cannot show a valid train ticket on the train is obliged to pay the price of the fare and the additional charge determined by the carrier's terms of service.

The passenger who has entered the vehicle without purchasing the train ticket shall pay additional fare if carriers' general terms and conditions contain such a provision.

If a train passenger does not have a train ticket and refuses to pay the ticket price (with possible additional charge) the carrier has the right to remove such a passenger from transport.

The passenger's right to abandon the contract is exercised if the passenger abandons the contract before its implementation has started, while the timeframe depends on the transport mode. For example, in bus transport the passenger can abandon the transport no later than two hours before the transport begins, while the carrier has the right to keep 10% of the fare. There are special rules for cases where the passenger abandons transport because it did not start on time, when the carrier is obliged to return the fare to the passenger.

In carriage by rail, the passenger has the right to interrupt the journey while the ticket is valid, in which case the proportional unused amount of the fare will be reimbursed. The passenger has the right to abandon the contract of carriage by rail before its execution starts under the conditions announced by the carrier. If the transport does not start on time, the passenger may exercise his/her right to abandon transport and demand that the fare be fully returned. The right to interrupt the transport is specified by carriers' terms of service.

In case the transport is interrupted, when the passenger loses connecting train due to delay or cannot continue the transport, the passenger has the right to demand the

carrier should transport him/her to the nearest stop by the next train or in another manner determined by the carrier without additional charge. The passenger also has the right to be returned by the carrier, together with the baggage, to the station of departure without additional charge and with the full refund.

The carrier who has concluded the contract of carriage is obliged to transport the passenger and the baggage (Knežević, 2009). There are two types of baggage transport:

- Transport of baggage which the passenger has registered with the carrier
- Transport of baggage which the passenger can carry on board (hand baggage).

The carrier is obliged to transport registered baggage and the passenger by the same vehicle, or by another vehicle if the passenger's agreement is obtained. The passenger is obliged to pay additional luggage fee to the carrier who will issue a written confirmation – the luggage ticket. When it comes to passenger's personal baggage, the so-called hand baggage, the carrier shall charge no additional fees or issue tickets.

There are special carrier's responsibilities for the hand baggage. The carrier shall pay for the loss of or damage to personal luggage only if the damage is carrier's fault, as the passenger is obliged to take care of the personal baggage. For registered baggage transport the same rules apply as for the carriage of goods. This type of liability is limited.

In carriage by train there is an express provision pertaining to the obligation of the passenger to obey customs regulations pertaining to hand baggage, luggage and vehicles, including the objects on or in them, as well as those pertaining to animals. The passenger must be present during the customs inspection of these items or animals.

Conclusion

When regulating the field of passenger transport in all transport modes, domestic legislation accepts the solutions of international conventions and agreements and EU laws, which underlines Serbian dedication to EU integration. Harmonization of domestic laws is achieved through the Law on Contract of Carriage by Road, the Law on Passenger Carriage by Road, the Law on Contracts of Carriage by Rail, the Law on Obligation and Property in Carriage by Air, the Law on Shipping. The contract of carriage of passengers is the most frequent legal deal, as large numbers of citizens conclude it on a daily basis. New challenges and health risks in modern world require us to examine the basic legal aspects of the contract of carriage of passengers. The discussion of carriers' responsibilities reveals that the carrier is obliged to admit any interested person.

When carrying passengers by rail, the carrier can transport a person infected or suspected to be infected by a contagious disease only if conditions specified in the carrier's general terms and conditions of service are met. If a passenger develops symptoms of a contagious disease during transport and if the disease is listed in the carrier's terms of service, the carrier is obliged to obey the terms of service and transport the passenger to the nearest place to get the medical assistance. The economic importance of the contract of carriage is growing. As carrier services improve, so does the consumer (passenger) protection. The modern environment, both domestic and international, is fraught with new challenges and passenger health hazards. Health risk assessment will be one of the factors determining the passenger's choice of the manner in which he/she will reach his/her destination (either domestic or international).

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