

THE PROTECTION OF AIR PASSENGERS' RIGHTS ON THE BASIS OF INTERNATIONAL AND EUROPEAN LAW

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1. INTRODUCTION

Over the last twenty years, air transport has had the largest development in Europe and worldwide. It is estimated that the annual increase in air traffic within the European Union after 1980 gained 7.4 percent. In 2011, airlines in 191 countries belonging to the International Civil Aviation Organization (ICAO) transported 2.7 billion passengers around the world, an increase of 5.6 percent than in the previous year,¹ while in 2010 European airlines alone transported 760 million² passengers. The total number of departures in 2011 is over 30.1 million.³ Currently, every day more than 25 000 aircrafts fly over the skies of Europe, 18 percent of which are delayed (average delay per delayed flight) for more than 15 minutes.⁴ In 2011, the average delay was 28 minutes.⁵ In the same year, 126 accidents involving commercial aircraft occurred all over the world, of which 16 resulted in death of 414 people.⁶ These figures will naturally provoke the interest of scholars in the subject of the passenger rights.

Often we observe – or even we, ourselves are involved – situations that directly concern the issue of the liability of the carriers and the need to enforce customer's rights at the airport. Therefore, this issue will be the subject of this study. The subject of passenger rights became extremely current, mainly due to work undertaken by the Committee on Transport and Tourism of the European Parliament on amendments to the Regulations of the European Parliament and Council Regulation No 261/2004 and 1107/2006,⁷ as well as other legal acts related to this issue in the European Union.⁸ The powers of using the airline services, like all others, will find its basis in relevant documents. Their protections in public international law are guaranteed by the following acts:

- i. Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, (hereinafter referred to as the Warsaw Convention);⁹
- ii. Convention for the Unification of Certain Rules for International Carriage by Air signed in Montreal 28 May 1999 (hereinafter referred to as the Montreal Convention);¹⁰
- iii. New York Convention on the Rights of Persons with Disabilities drawn in New York on December 13, 2006.

In turn, protect the rights of air passengers in the European Union provide the following acts:

- i. Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Regulation Council Regulation (EC) No 2027 /97 on the carrier's liability aviation accidents lotniczych¹¹ (hereinafter referred to as Regulation No 889 /2002).

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¹ Annual Report of the Council, International Civil Aviation Organization, http://www.icao.int/publications/Documents/9975_en.pdf (10 April 2013).

² Jerzy, Litwiński: *Linie lotnicze świata w 2010 r.*, Urząd Lotnictwa Cywilnego [Airlines of the World in 2010.The Civil Aviation Authority].

http://www.ulc.gov.pl/_download/publikacje/_porty_krajowe_11.pdf (10 April 2013).

³ Ibid.

⁴ Coda Digest. Delays on air traffic in Europe. Annual 2011,

<http://www.eurocontrol.int/sites/default/files/content/documents/official-documents/facts-and-figures/coda-reports/CODA-Digests-2011/coda-digest-annual-2011.pdf> (10 April 2013).

⁵ Ibid.

⁶ Annual Report of the Council..., *op. cit*

⁷ Regulation (EC) No. 1107/2006 of the Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, Dz. U. L 204, 26. July 2006 r., 1-9.

⁸ More: Majewska, Majewska: *Ochrona praw osób podróżujących drogą lotniczą w świetle najnowszych propozycji Parlamentu Europejskiego* [Protecting the rights of people traveling by air in the light of the recent proposals of the European Parliament]. *Przegląd Komunikacyjny* Vol. 58. (2013), No. 1, 26.

⁹ Dz. U. 1933 nr 8, poz. 49.

¹⁰ Official Journal of the European Union L 194, 18/07/2001 P. 0039 – 0049, [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22001A0718\(01\):en:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22001A0718(01):en:HTML) (30 May 2014).

¹¹ Official Journal of the European Union L 140 z 30.5.2002, 246-249.



- ii. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules compensation and assistance to passengers in case of denied boarding and of cancellation or long delay of flights, repealing Regulation (EEC) No 295/91¹² (hereinafter referred to as Regulation 261/2004);
- iii. Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement legislation on consumer protection ("Regulation on cooperation in the field of consumer protection").¹³
- iv. Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of Community list of air carriers subject to an operating ban within the Community and on informing passengers using air transport repealing art. 9 Directive 2004/36/WE.¹⁴
- v. Regulation (EC) No 1107/2006 of the European Parliament and the Council of 5 July 2006 concerning the rights of persons with disabilities and persons with reduced mobility when traveling by air.¹⁵
- vi. Regulation (EC) No 1008/2008 of the European Parliament and Council of 24 September 2008 on common rules performance of air services in the Community (hereinafter referred to as Regulation No 1008 /2008).¹⁶

Not all of those regulations will be discussed in detail in this paper due to its limitations. The author will only present a comparison of rights called, for the purposes of this article, fundamental rights such as the right to information, timely transport and related rights to compensation for delayed or canceled flights, boarding and the related compensation in the event of boarding refusal, secure carriage and related entitlement to compensation in case of death, injury or health disorders, carryon luggage, and related entitlement to compensation for its loss or delay in delivery. At the outset, it should be stressed that the Community signed the Montreal Convention indicating its intention to accede to the Agreement by ratifying in the Point 5 of the preamble of Regulation No 889 /2002. This decision caused a need for changes to previously existing Council Regulation (EC) No 2027/97¹⁷ in order to harmonize European and international standards. Without a doubt, despite the conducted harmonization of European legislation and international comparison of the rights of passengers in the two legal regimes is necessary due to the slight, but still existing differences in the entitlements. It has become necessary to become aware of their existence in view of the increasing mobility of the population, not only in the EU but also outside it. It is also necessary due to the growing interest in travel in the eastern direction by European Union citizens and disruptions occurring during these travels. The subject of the preliminary analysis will be the scope of individual acts.

In accordance with Art. 1 of the Montreal Convention, it is applicable "to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking." In general, the act actually repeats the provisions of art. 1 of the Warsaw Convention of 1929, and the difference is only that the Montreal Convention uses the phrase "loads" (cargo) instead of previously used word "goods" (goods). The original definition of international carriage contained in the Warsaw Convention has been modified by provisions of the Hague Protocol¹⁸ and after that it coincides with the definition in the Montreal Convention. However, the definition of air transport undertakings or the carrier is not found here, despite the fact that it lays down its legal situation.¹⁹

At this point desirability of reproducing the definition of both the Warsaw and Montreal Convention should be emphasized. It stems from the fact that both systems exist in parallel but formally independent systems because not all state parties to the first accepted the other, and if so, did not denounce (so far) of the Warsaw Convention. Since this raises collisions of international obligations the Convention Montreal

¹² Ibid. L 46 z 17.2.2004, 10-16.

¹³ Ibid. L 364 z 9.12.2004, 1-11.

¹⁴ Ibid. L 344 z 27.12.2005, 15-22.

¹⁵ Ibid. L 204 z 26.7.2006, 1-9.

¹⁶ Ibid. L. 29 z 31.10.2008, 3-20.

¹⁷ Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, Dz.U. L 285 z 17.10.1997.

¹⁸ Protocol to amend the convention for the unification of certain rules relating to international carriage by air, signed at Warsaw on 12 October 1929, The Hague 28 September 1955, <http://www.mcgill.ca/files/iasl/hague1955.pdf> (31 May 2014).

¹⁹ Polkowska, Małgorzata – Szymajda, Izabela: *Konwencja montrealaska. Komentarz. Odpowiedzialność cywilna przewoźnika lotniczego* [The Montreal Convention. Comment. Civil liability of the Air Cartier]. Liber 2005, 21.

contains Art. 55 stating that it has priority of application by state parties in relations between the countries party to the new Convention in this respect, they are also parties to one or more documents of the Warsaw system, or the territory of any state party to the new Convention, in this respect that the country is also a party to one or more documents of the Warsaw system. Regulation (EC) No 889/2002 already in the Art. 1 contains information that it introduces the relevant provisions of the aforementioned Montreal Convention in respect of the carriage of passengers and their baggage by air. In this article, however, we can also find the record that it establishes certain supplementary provisions and that it extends the application of these provisions also in relation to carriage by air within each Member State. Therefore it extends the scope of application of the provisions of the Montreal Convention to carriage made within each Member State of the EU, thus modifying for this purposes of this Regulation, the definition of international carriage contained in the Convention.

Regulation (EC) 261/2004 Art. 3 says, however, that it shall apply to:

(a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;

(b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.²⁰

At the same time, in the case 173/07²¹ Spokesman of the Court of Justice considered that the passengers on a return flight from a third country to a Member State are not “*passenger (s) departing (I) from an airport located in a Member State*”- within the meaning of Art. 3. Para. 1 point a) of the Regulation No. 261/2004 and therefore do not fall within the personal scope of application of this Regulation, if the air carrier of the flight concerned is not a Community carrier, even if a flight to destination place and return flight were booked at the same time.

2. THE SCOPE OF THE RELEVANT RIGHTS

2.1. Right to Information

Regulation No 261/2004 in Art. 14 provides for the obligation to inform passengers about their rights. It imposes an obligation on air carriers to place the information about these rights at a prominent place at check-in, and its content according to Article 20. In addition, it imposes the need to submit individually written information about passenger rights to people who were actually denied boarding or whose flight is canceled or delayed for at least two hours. It also emphasizes the need to provide such information to the blind or partially sighted by other available means. Moreover, Art. 6 of the Regulation No 889/2002 states that all air carriers offering their services in the Community have an obligation to ensure that a summary of the main provisions governing liability for passengers and their baggage, including deadlines for the payment of compensation and the possibility of making a special declaration for baggage, is available at all points of sale, including sale by telephone or via internet. Along with the information requirements set above, in accordance with the provisions of the Regulation, all the carriers in respect of carriage by air provided or purchased in the Community, have the duty to provide each passenger with a written indication of:

- (a) the applicable limit of liability of the carrier for the flight in case of death or injury, if such limit exists;
- (b) the applicable limit of liability of the carrier for the flight in case of destruction, loss or damage of baggage and warning that the baggage of greater value than the specified amount, should be reported to the airline at check-in passengers and baggage or should be separately, fully insured by the passenger prior to travel;
- (c) the applicable limit of liability of the carrier for the flight for losses caused by delay.

²⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004R0261> (30 May 2014).

²¹ Opinion of the Advocate General of the Court of Justice of the European Communities on 6 March 2008, *Emirates Airlines Direktion für Deutschland v. Dieth Schenkel*, C-173/07, *LexPolonica*: 272942.

The Warsaw Convention and the Hague Protocol supplement, however, do not contain similar records relating to the information obligation incumbent on the air carrier. The Montreal Convention in Art. 3 only contains a record that the passenger receives a notice in writing stating that, if this Convention applies, it governs and may limit the liability of carriers in respect of death or injury and for destruction, loss or damage of baggage, and for delay. Therefore, the scope of information guaranteed by the provisions of the legislation in force in the European Union is undoubtedly much broader than that of the international regime. Passengers traveling from or to the EU countries and using the services of European Union carriers are able to orient themselves to their rights significantly faster and easier due to provisions of the Regulations. In addition, it should be noted that the right to information governed by the EU also affects the price information and this issue was not raised in acts of international importance. The probable cause of this is the period of their formation. This problem has been settled in Art. 23 of Regulation No 1008/2008, prescribing that the publicly available tariffs and air rates, including conditions of carriage and the price which the passenger has to pay have to be always demonstrated. Also, this price must also include the applicable tariffs and air rates, taxes, surcharges, fees and charges in detail that are impossible to avoid and possible to demonstrate at the time of publication of the offer. This information should be presented in a clear and transparent way at the beginning of booking and consent to their acceptance by the customer shall be optional. So, detailed regulation only appeared in 2008 and there was a, no doubt, Community (now EU) reaction to the not always clear practice of air carriers.

2.2. The Right to Timely Transport: Transport Delay

The issue of flight delays is extensively regulated both in the European Union legislation and in international instruments, although, the very definition of delay is not found in any of them. Article 19 of the Warsaw Convention (unchanged by the Hague Protocol) refers to the responsibility of carriage for damage occurring from delay in the carriage of passengers, baggage and goods. By contrast, Article 20 (which also remained unchanged) exempts the carrier from liability if it proves that the carrier and persons acting as its employees have taken all necessary measures to avoid the damage or that it was impossible for them to take the measures. These provisions were developed similarly in articles 19 and 20 of the Montreal Convention. In the first, only the word "community" and "goods" were replaced by "people" and "load". This article is also supplemented with a record of which in the Warsaw Convention was devoted a separate article (Article 20), namely the release of the carrier from liability for damage occasioned by delay if it proves that it and its employees and agents took all reasonably, necessary measures to avoid the damage or that it was impossible for them to take such measures. The wording of this article, compared to a similar record in the earlier convention, is more flexible and realistic and creates easier to accept and fulfill standard.²²

Article 20 of the Montreal Convention expands this exemption from liability for the causes when the damage is caused by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights or to which such persons have contributed. In such a situation, in accordance with the provisions of the quoted document, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent to which such negligence or wrongful act or omission caused or contributed to the damage. Limits to the carrier's liability have not been established in the Warsaw Convention, so it seems that limit fixed by Hague Convention should be adopted, and it is 250 000 francs for both delay and harm to the person. Regarding the second Convention, the limit is determined there and it is 4 150 Special Drawing Rights (SDR), then increased to a higher amount. It is presumed that the carrier is not at fault and will not be charged until reason (passenger) did not demonstrate that due to the delay in the carriage suffered damage.²³

The Art. 6 of Regulation Nr. 261/2004 regulates the issues of flight delays. It provides that if the operating carrier has reasonable reasons to predict that the flight to be delayed beyond its scheduled start of concrete specified in article standard time on the route of the designated therein the length²⁴ of the

²² Polkowska et al.: *op.cit.* 60.

²³ Ibid.

²⁴ Article 6:

- a) two hours in case of flights to 1500 kilometers ; or
- b) three of more hours in case of flights in the EU that are longer than 1500 kilometers and other flights with the length in between 1500 and 3500 kilometers; r
- c) four or more hours in case of other flight that described in point a) or b)

passengers offered by the operating air carrier help in the form of meals and drinks in a reasonable relation to the waiting time, and the possibility of holding two phone calls or sending two teletype or two fax messages, or e-mailing. In a situation when the reasonably expected time of departure is at least the day after the deadline departure previously announced, the assistance will take the form of hotel accommodation with provided transportation between the airport and place of accommodation (hotel or other).²⁵ In contrast, when the delay is at least five hours, however, the expected departure will take place on the same day as the original flight, passengers are entitled to reimbursement within seven days, by the means provided for in Art. 7, Para. 3 of the Regulation, the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan. Passengers can also apply for a place in the return flight to the first point of departure at the earliest possible date.

2.3. The Right to Travel: Flight Cancellations

The above discussed international conventions were silent on a definition of the transport cancellation and – differently to European Union law system – do not regulate this issue that is treated in details in Regulation 261/2004 in Art. 5.

In case of flight cancellation passengers are guaranteed assistance by the operating air carrier in accordance with Art. 8 and Art. 9, Para. 1 point a) and Art. 9, Para. 2, as well as, in the case of re-routing when the reasonably expected time of departure of the new flight is at least one day after the scheduled start of the canceled flight, the assistance specified in Article. Article 9, Para. 1 point. b) and c) and, with some exceptions, have the right to compensation by the operating air carrier in accordance with Art. 7. Situations where passengers are deprived of such rights, are those in which they were informed of the cancellation at least two weeks before the scheduled time departure or during a period of two weeks up to seven days before the scheduled time of departure and were offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach the final destination less than four hours after the scheduled time of arrival. This also applies to passengers who have been informed of the cancellation less than seven days before the scheduled time of departure and were offered re-routing, allowing to depart no more than one hour before the scheduled time of departure and to reach the final destination less than two hours after the scheduled time of arrival. The Regulation also guarantees the need to provide passengers, which were informed of the flight cancellation explanation of the possible alternative transport.

Moreover, the Regulation limits the liability of the operating air carrier on the payment of the compensation provided in Art. 7 in a situation when air carrier can prove, that the cancellation was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures. The obvious and *expressis verbis* regulated issue is that the burden of proof of whether and when the passenger has been informed of the cancellation, rests on operating air carrier.

2.4. Right to Boarding: Denied Bording

Which the problem of denied boarding, which is caused by the so-called over booking, we as passengers, meet more often. It has been calculated that in 2002 in the European Union 250 000 of passengers were denied entry on board.²⁶ Low cost airlines (but not only) sell more tickets than they are able to offer on a given passage, hoping that not all passengers decide to finally take advantage of their services. The problem of over booking has not yet been regulated by any of the documents dealing on an international scale but it is already regulated by European Union. The definition of this phenomenon is in Art. 2 of the Regulation 261/2004 and means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Art. 3. Para. 2 of the Regulation, unless it is reasonably justified, in particular reasons of health, the requirements security or inadequate travel documentation. Article 4 of that document contains the relevant records relating to denied boarding. This provision refers to the entire procedure to be followed in such situations, explaining that at the time, the carrier has reasonable grounds to anticipate a refusal boarding, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions agreed between the passenger and the air

²⁵ Art. 8 lit. b) Regulation 261/2004, s. 14.

²⁶ Polkowska, Małgorzata: *Ochrona praw pasażerów w transporcie lotniczym*, [Protecting the Rights of Air Passengers.] *Jurysta*, No. 10-11 (2006), 24.

carrier serving. In accordance with the provisions of the Regulation, volunteers should be given assistance under the terms of Art. 8, treating it as an addition to the benefits mentioned in this paragraph. However, if the number of volunteers comes forward to allow the boarding of other passengers with reservations, the operating air carrier may, against their will, deny boarding, in that case it must immediately compensate them in accordance with Art. 7 and assist them in accordance with Art. 8 and 9 of Regulation.

2.5. The Right to Safe Carriage: Compensation in Case of Death, Injury and Disturbance of Health

According to Article 17 of the Warsaw Convention the air carrier is responsible for damage caused in the event of death, wounding or any other bodily injury suffered by a passenger if the accident which caused the damage, occurred on board the aircraft or during any operations of embarking or disembarking. It does not conform for all activities associated with effected journey, made or occurring at the airport (which was the subject of the analysis of the Polish Supreme Court, in the case number I CR 330/7028²⁷). Article 22 limits the liability to the amount of 25 000 francs per passenger, claimed, however, that it is possible to determine the upper limit by special agreement. The Montreal Convention governs the liability for death, personal injury and also health disorder in the Art. 17, acting almost the same as the Warsaw Convention. Its composition insists, however to meet the conditions in the form of an accident on board the aircraft or during any of the operations of embarking or disembarking. In Art. 21 the boundaries of compensation for these events had been established and it is assumed that the carrier is always responsible for damage caused by death or personal injury to a passenger or upset health to the size of 100 000 SDR for each passenger (strict liability regime, independent the degree of fault of the carrier).²⁸ Importantly, if the carrier proves that such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or when such damage was solely due to the negligence or other wrongful act or omission of a third party (right of recourse) it shall not be more than the listed consequences.

In European Union law above mentioned issues have been regulated in a different manner. Regulation 889/2002 states that there are no financial limits on liability for death or injury of a passenger. Air carrier cannot contest claims for compensation for damages amounting to 100 000 SDR (approximate amount in local currency). Above this size the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault. Moreover, according to the wording of the Regulation, if a passenger is killed or injured, the air carrier must, within 15 days of establishing the person entitled to compensation, make an advance payment, to cover immediate economic needs. In case of death, this advance payment shall not be less than 16 000 SDR (approximate amount in local currency).

2.6. Right to Carry Luggage: Responsibility for Corrupted or Damaged Luggage

One of the basic matters governed by international law and European Union law is the carrier's liability for defective or damaged luggage. It has already been settled in the Warsaw Convention, that in Article 18 (not amended by the Hague Protocol) provides that air carriage is responsible for damages in case of destruction, loss, or damage to, the expedition baggage or cargo, if the incident that caused the damage took place during the carriage by air, and Art. 19 additionally governs the liability for baggage delay. Furthermore, in the second paragraph of Article 18 air transport is defined as the period during which the baggage or goods are under the care of transporting, regardless of whether they are at the airport, on board of the aircraft or in any place in case of landing outside the airport. This period does not cover any carriage by land, sea or river, made outside the airport. The Convention limits the liability of the carrier baggage accepted for shipment and goods (as amended by the Hague Protocol) to the sum of 250 francs per kilogram, except in the case of deposit by the consignor at the time of going to the carrier package special declaration of interest in delivery and payment of any additional payment. In this situation carries will be obliged to pay compensation up to the amount of declared sum, unless it proves that this amount exceeds the consignor's actual interest in delivery. In the event of loss, damage or delay of part of baggage accepted for shipment or goods or any object contained therein, to determine the limit of liability takes into account only the total weight of the package or packages. However, if loss, damage or delay of one

²⁷ Wyrok Sądu Najwyższego [Judgment of the Supreme Court] from 19.01.1971 r., I CR 330/70, OSPiKA 1972/2 poz. 31, LexPolonica, Nr 319259

²⁸ Polkowska et al.: *op. cit.* 65.

part of the baggage accepted for expedition or cargo, or of any object contained therein causes reduction in the value of other packages covered by the same baggage receipt or the same letter, to determine the limit of liability should take into account the total weight of the packages.

As for the items, which takes care of the passenger carrying responsibility is limited to 5,000 francs in relation to one passenger. A slightly different issue is governed by Art. 17, Para. 2 and subsequent of Montreal Convention stating that the carrier is liable for damage sustained in case of destruction, loss or damage to, checked baggage upon condition only that the event which caused the destruction loss or damage took place on board the aircraft or during any period within which the checked baggage was in charge of the carrier. Destruction in the meaning of this Convention need not be caused by an accident,²⁹ and the carrier is not liable if the damage resulted from the inherent defect, quality or vice of the baggage. On the other hand, in the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its employees or agents.³⁰ Also the traveler is entitled to claim from the carrier the rights under the contract of carriage, if it admits the loss of checked baggage, or baggage has not arrived after 21 days from the date on which it should arrive. The term of its delivery shall be calculated from the time arranged in accordance with the timetable of arrival.³¹ According to the provisions of the Convention, unless otherwise specified, the term "baggage" means both the accepted and adopted. Similarly, as in the case of the Warsaw Convention, the issues of delays in the delivery are regulated by Art. 19. The limits of liability of the carrier can be found in Art. 22, according to which in the case of destruction, loss, damage or delay the liability has been limited to 1 000 SDR for each passenger unless he has made, at the time when the checked baggage was handed to the carrier, a special declaration of interest in delivery at destination and has paid additional charges. In such a situation, the carrier is liable for an amount not exceeding the declared amount, unless he proves that the sum is greater than the passenger's actual interest in delivery at destination. Establishing a permanent limit of liability for damages arising from a carriage of baggage, this provision has become more equitable for passengers than similar regulations contained in the Warsaw Convention (the limit based on weight), because the value of the baggage is not related to its weight.³² European Court of Justice³³ also held that determined in Art.22, Para.2 limit of the carrier's liability should be applied to the entire damage, regardless of whether it is the nature of the material, or moral. Responsibility for destroyed, damaged or delayed baggage regulates the Regulation 889/2002, under which, in the case of baggage delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or taking such measures was not possible. The liability for baggage delay is limited to 1 000 SDR (approximate amount in local currency). The air carrier is also responsible for the destruction, loss or damage to baggage up to 1 000 SDR (approximate amount in local currency). In the case of checked baggage, it is liable even if not at fault, except where the baggage was defective. In the case of unchecked baggage, the carrier is liable only if at fault. Moreover, in accordance with the provisions of the Regulation, the passenger can benefit from a higher limit of liability of the carrier for baggage by submitting special declaration at check-in and by paying a supplementary fee. In any case, if the baggage is damaged, delayed, lost or destroyed, the regulation imposes an obligation on the passenger as soon as possible submit a written complaint to the carrier. In case of damage to checked baggage, the passenger must write and complain within seven days, in the case of delay within 21 days. In both cases, the period shall run from the date on which the baggage was placed at the disposal of the passenger.

3. SUMMARY

The analysis presented in this article shows that despite many existing similarities, the differences are relevant in these different legal regimes. At the same time it refers to how important it is to be aware of these differences in the daily life of every European, or just a passenger. In summary, the rights of citizens of the European Union in this field should be assessed as far broader and more far-reaching, but even these, although seemingly quite detailed and comprehensive regulations are subject to debate on possible

²⁹ Polkowska et al.: *op. cit.* 56.

³⁰ E. g. when the baggage is damaged by the cabin crew to help the passenger locate it on a shelf.

³¹ Polkowska, et al.: *op. cit.* 56.

³² *Ibid.* 68.

³³ Wyrok Trybunału Sprawiedliwości [Judgment of the Court of Justice] 06.05.2010 r., C-63/09, ZOTSiS 2010/5/I-4239-4260, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0063:PL:HTML>.

changes. At this point it should be noted that the existence of even the best legislation cannot be assessed as complying with their duties until their provisions do not become common and used knowledge.