

European and International Law on Passenger Rights

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European and International Law on Passenger Rights

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1. Introduction

It is perhaps appropriate to begin this *homage* with a “disclosure” that I have never met Professor Časlav Pejović in person and yet I feel like knowing him quite well, probably because of his impressive professional career and his excellent books dedicated to maritime law.

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For decades, Professor Pejović has been Professor of Law at the Faculty of Law, Kyushu University, Japan. He read law at the University of Montenegro (B.A.), has obtained LL.M. degree from the University of Belgrade and Kyoto University, and Ph.D. degree from Zagreb University. He also lectured at Chulalongkorn University, Tsukuba University, Tilburg University, Duke University Asia-America Institute in Transnational Law, and Shanghai University of Finance and Economics. He was visiting scholar at Max Planck Institute for Comparative and International Private Law in Hamburg, the National University of Singapore, and Mae Fah Luang University. Pejović is a member of several international academic and professional associations, such as the International Academy of Comparative Law (IACL), the International Academy of Commercial and Consumers Law (IACCL), the Asian Law and Society Association (ALSA), and the Japanese Association of Maritime Law. Some of his papers are published in the world leading journals, and some are translated in other languages. He also served as arbitrator of the ICC Arbitration.

I remember the first time I heard about Časlav which was during my involvement in international reinsurance arbitration. As a legal consultant to one of the parties I had a privilege to collaborate with the esteemed Professor Emeritus Borislav V. Ivošević with whom Professor Pejović later wrote a monumental book on comparative maritime law. We have started exchanging e-mails and exploring various possibilities for our cooperation; in this spirit I delightfully reviewed his new book on transport documents in carriage of goods by sea.⁽²⁾

His book brings a fresh, comparative view transport documents used in the carriage of goods by sea, covering bills of lading, sea waybills, ship's delivery orders,

(1) Borislav V. Ivošević, Časlav Pejović, *Pomorsko pravo* (Pravni fakultet Univerziteta Union 2019).

(2) Časlav Pejović, *Transport Documents in Carriage of Goods by Sea: International Law and Practice* (Informa Law from Routledge 2020).

multimodal transport documents, and electronic transport documents. In addition to English law (United Kingdom) which dominates this area, the author (un)intentionally followed the legendary and indeed very unique Professor William Tetley's comparative approach of examining other jurisdictions including Belgium, Canada, China, Croatia, European Union, France, Germany, Hong Kong, Italy, Japan, Netherlands, New Zealand, Singapore, South Korea, Thailand, and United States of America. The gist is a comparison between civil law and common law which is one of the best characteristics of this monograph.

Furthermore, his book provides a historic perspective of development of transport documents from the roots that can be unearthed in Roman law to blockchain bills of lading and other modern technologies. This enables an insight into how maritime law has been growing over centuries while maintaining its fundamental principles and values. It is commendable that Časlav's monograph is not merely descriptive, since it delves into complex legal issues concerning transport documents, containing numerous fresh ideas and challenges some of the well-established concepts that are considered as settled in law.⁽³⁾

On the other hand, Časlav Pejović was more than kind to review one of my latest books on passenger rights,⁽⁴⁾ which was not really a quid pro quo thing but rather a nice gesture of courtesy. The book forms part of the book series *IMLI Studies*⁽⁵⁾

(3) Marko Pavliha, *Professor Pejović on Transport Documents in Carriage of Goods by Sea*, European Transport Law, Vol. LVI No. 4 - 2021, pp. 349-351.

(4) Marko Pavliha (ed.), *Transport Law on Passenger Rights* (Routledge 2021). Other authors in alphabetical order (who will be presented in more detail in the following footnotes) are David Joseph Attard, Janja Hojnik, Marko Ilešič, Ángeles Jiménez García-Carriazo, Norman A. Martínez Gutiérrez, and Patrick Vlačić. Technical and other precious assistance to the Editor was provided by Gaja Ana Pavliha, then Attaché, Assistant Legal Adviser at the Permanent Representation of the Republic of Slovenia to the European Union, Brussels, Belgium, now a candidate attorney in Koper, Slovenia.

(5) IMO IMLI is International Maritime Law Institute in Malta, See <<https://imli.org>> accessed 2 August 2022.

in International Maritime Law which was published by Routledge simultaneously in London and New York, and was dedicated to the publishing of original, scholarly contributions that analyse key issues in international maritime law, which are of interest to an audience of students, scholars and practitioners in international maritime law. In January 2019, Professor Norman Martinez succeeded Professor David Attard⁽⁶⁾ as General Editor of the book series.

Professor Pejović wrote, inter alia:

“To the best of my knowledge, this is the first book that is not limited to a particular mode of transport of passengers, making this book a pioneer project. A comparative advantage of this book is that several experts with different backgrounds provide different perspectives of passenger rights that represented the basis for comprehensive coverage of this area of law by this excellent book.”⁽⁷⁾

And he generously concluded:

“The book is well researched and written, covering the most relevant issues concerning the important and growing topic of passengers’ rights. Its inclusion of analysis of relevant EU legislation and case-law of the European Court of Justice ensures its importance to practitioners and academics alike. By its unique approach, the book certainly breaks new ground in literature on passengers’ rights and will be welcome in the field by both academics and professionals. Overall, this is a truly valuable book that represents an

(6) Former longstanding Director of the IMO International Maritime Law Institute, Msida, Malta, Judge and former Vice-President of the International Tribunal for the Law of the Sea (ITLOS), Hamburg, Germany. Professor Attard kindly wrote a Foreword to the book.

(7) Časlav Pejović, *Transport Law on Passenger Rights*, European Transport Law, Vol. LVI No. 5 – 2021, p. 464.

essential contribution on the scholarly literature on the subject.”⁽⁸⁾

I was therefore very happy and flattered when Professor Steven Van Uytsel invited me to contribute a paper for a special *liber amicorum* in honour of Professor Časlav Pejović at his retirement from Kyushu University, Japan. I hope it is not too vain to take this solemn opportunity to present the aforementioned book on passenger rights in more detail, explaining its gist and potential value for the future of international transport law.

2. Background of the Book on Passenger Rights⁽⁹⁾

The glue of transport(ation) itself is transport law, which *lato sensu* covers a very broad spectrum of legal branches, a noble blend of common law and civil law traditions, including maritime law, aviation (air) law, rail law, road law, and multimodal law, including public and private law issues. However, *stricto sensu* it refers to the contracts of carriage of goods, passengers and luggage (baggage) by various means of transport, entailing specific rules with respect to passenger rights.

Many articles and several books have been written on legal and other aspects of passenger rights in air transport and also in other transport modes, however, none of them to my knowledge treats the subject comprehensively and holistically. Thus the idea of a new monograph which has been sparked by the paper published in 2013 in the European Transport Law.⁽¹⁰⁾

(8) *ibid.*, p. 465. The book has also received other excellent reviews, e.g. in *IMLI e-News*, Vol. 18, Issue No. 110, 29. July 2021; Mitja Grbec in *Pravna praksa*, No. 41-42/2021, pp. 44-45; *Focus Law/Droit*, McGill Faculty of Law 2021-2022, p. 39; Nebojša Jovanović in *Pravo i privreda*, 2021, Vol. 59, No. 4, pp. 585-589; Steven Truxal in *Royal Aeronautical Society*, 2022, p. 47, and Nikoleta Radionov in *Zbornik znanstvenih razprav Pravnog fakulteta u Zagrebu*, Vol. 71, No. 5, 2021, pp. 797-801.

(9) See Pavliha (ed.), 2021, pp. 1-7.

(10) Marko Pavliha, *Enlightenment of the European Attitude Towards Passenger Rights: In dubio pro consumatore* [2013] *European Transport Law* 229-245.

Europe and also the rest of the world has experienced a boom in mobility over the last thirty years. In light of the protection of increasing number of consumers – passengers it is almost logical that during the past few decades, international and European transport law has developed almost to revolutionary extent, especially in the field of private aviation (air) law with the introduction of unlimited liability of carriers for death and injury of passengers and commendable sophisticated rights in case of denied boarding, cancellation of flights and long delays. The safety and consumer protection orientated achievements are to be attributed especially to the International Air Transport Association (IATA), International Civil Aviation Organization (ICAO), European Civil Aviation Conference (ECAC), the Commission on Air Transport of the International Chamber of Commerce (ICC) and the Commission of the European Union (EU). The latter set the objective to introduce passenger protection measures to all modes of transport in the 2001 White Paper and has indeed succeeded admirably.

It is therefore fair to say that presently the EU is more or less the only area in the world where citizens are protected by a *full set of passenger rights* - whether they travel by air, rail, ship, bus and coach (there are some positive exceptions, for example the US federal and intrastate laws on common carriers responsibilities, including airlines, trains, cruise ships, and buses). The existing EU rules regarding passenger rights may be described as a symbiosis of ethics and law, providing minimum protection for travellers and facilitating mobility and social integration within and across transport modes. Additional rights derive from the Charter of Fundamental Rights, the EU consumer rules, the Package Travel Directive, national contract law provisions and international conventions as transposed into EU law.

However, as explained in the special Communication from the Commission to the European Parliament and the Council - A European vision for Passengers:

Communication on Passenger Rights in all transport modes - the comprehensive package of rights is not yet completely and correctly implemented. For instance, passengers are not sufficiently aware of their rights, "or they give them up in frustration because it is costly and cumbersome to defend them." National authorities still apply the EU law in different ways, confusing passengers and carriers and creating distortions in the market. The Commission has therefore insisted in its 2011 White Paper on Transport on the need to reinforce the implementation of current rules and improve them where necessary. Further to public consultation and increasing criticism from the aviation industry and academia of too creative case law, it is expected that the regulation on air passenger rights will be revised sometime in the not too distant future.

According to the Commission, passenger rights are based on three cornerstones: Non-discrimination, accurate, timely and accessible information and immediate, proportionate assistance. The most important rights cover the following aspects of carriage: (1) Non-discrimination in access to transport, (2) mobility: accessibility and assistance at no additional cost for disabled passengers and passengers with reduced mobility, (3) information before purchase and at the various stages of travel, notably in case of disruption, (4) right to renounce travelling (reimbursement of the full cost of the ticket) when the voyage is not carried out as planned, (5) fulfilment of the transport contract in case of disruption (rerouting and rebooking), (6) assistance in case of long delay at departure or at connecting points, (7) compensation under certain circumstances, (8) liability of carrier to passengers, also for the loss or damage of their baggage, (9) accessible, fast and efficient system of complaint handling and (10) full application and effective enforcement of the EU law.

The increasing need for multimodal transportation requires a renewed legislative framework for passenger rights to deal with the issue of disruption at connecting

points in an intermodal voyage. Intermodality enhances the effectiveness of passenger protection by facilitating re-routing or providing appropriate information on intermodal travel connections at the earliest possibility. Transport globalization requires “through tickets” (a single transport contract for several legs within one mode) and “integrated tickets” (establishing a transport contract for an intermodal travel chain) which facilitate travel and improve passenger rights. Heavy weather conditions and volcanic eruptions affecting planes, trains and road transport in the past few years have highlighted the need for more flexibility in Europe’s transport systems and for more effective, intermodal solutions to preserve the mobility of passengers and businesses through enhanced preparedness, coordination and cooperation between all stakeholders.

Despite of the fact that the EU is so far one of the few regions of the world or perhaps the only one with the minimum standards across all transport modes benefiting all passengers in Europe, including third country nationals travelling on transport services covered by EU regulations, the law is not perfect or flawless and is yet to be upgraded, especially in the field of carriage of passengers by air following the (un)expected originality of the Court of Justice of the EU in Luxembourg (CJEU) in construing some of the vague provisions of the relevant regulation (the Court should not perform the role of legislator). The rules must be applied consistently in practice which requires a proper education and training of all working in transportation. To improve passenger protection beyond EU borders, passenger rights issues will be addressed in bilateral and international agreements for all modes of transport, as laid out in the White Paper.

It is hoped the European transportation law will inspire international governmental and non-governmental organizations to follow the trend of seeking balance between carriers and passengers in order to achieve just, fair, uniform

and certain international passenger rights all over the globe. According to the rule *in dubio pro consumatore*, in the event of any doubt, the provisions of the international conventions, the EU and national legislation and contracts of carriage ought to be interpreted in the manner most favourable to the person whom they are intended to protect, namely the consumer of the transport service.

The book on passenger rights casts light through a critical prism on the most important characteristics of the international transport law, the EU legislation and jurisprudence governing passenger rights in all modes of transport, also in such difficult times as the COVID-19 pandemic. In particular, it discusses the role of international organizations in providing and protecting passengers rights, the EU institutions and passenger rights (legislative and judicial development), as well as the passenger rights during the carriage by sea, the carriage by air, the carriage by rail, and the carriage by road.

It could be argued and proposed that the commendable legal solutions and experience of the EU can serve as an excellent framework for a new holistic international convention on passengers rights in all transport modes, but this is already beyond the scope of the present textbook. There are also new phenomena which need further research and new publications, such as transportation network companies (for instance, Uber), private space tourism, autonomous vehicles and unmanned transport, etc.

The monograph does not offer practical guidance and legal procedures for passengers who experience delays, cancellations, loss of luggage and other problems when traveling in the EU. All these instructions are concisely explained on the official EU website concerning air, rail, bus, coach, and ship passenger

rights, including “travel and coronavirus.”⁽¹¹⁾ However, for ease of reference all the major EU regulations dealing with passenger rights may be found as at the end of the book as the appendixes.

Let us take a quick look at the main messages of the book which is intended, if I am permitted to put it metaphorically, to be also a *liber amicorum* to all passengers, not only to lawyers and other professionals.

3. The Role of International Organizations

As explained by Dr. Ángeles Jiménez García-Carriazo,⁽¹²⁾ over the last decades, passenger mobility has increased considerably which necessarily brings increasing problems, such as cancellations, lost and damaged luggage, or delays in arrival or departures of planes, ships, trains and coaches. Several international organizations, including the ICAO, the International Maritime Organization (IMO), the Intergovernmental Organization for International Carriage by Rail (OTIF), the Organization for the Co-operation of Railways (OSJD), the International Rail Transport Committee (CIT), or the International Road Transport Union (IRU), have contributed to the creation of a separate transport legal framework which, originally, lacked a consumer-orientated perspective. Recent developments in international organizations within the sphere of consumer rights are enabling the emergence of regimes that provide an additional layer of protection to passengers. In particular, Mrs. Jiménez García-Carriazo examines the contribution of technical and regional international organizations towards the protection of the rights of passengers in international carriage by air, sea and land.

(11) See < https://europa.eu/youreurope/citizens/travel/passenger-rights/index_en.htm > accessed 2 August 2022.

(12) Nippon Foundation Lecturer on Global Ocean Governance at the IMO International Maritime Law Institute, Msida, Malta. See Pavliha (ed.), 2021, pp. 8-31.

4. EU Institutions and Passenger Rights

Judge Dr. Marko Ilešič⁽¹³⁾ explores the development of the policy and the legislation and case-law on passenger rights in the framework of the EU. His chapter is divided in four parts. Firstly, the legal system of the EU is introduced with a particular emphasis on the fact that the EU legal system is not independent, but it has to be understood, interpreted and applied in the light of the interdependency of EU law and relevant national law of member countries and also international law. The competence of the EU in the field of transport is shared with the member states.

The second part deals with the primary law of the EU as the legal framework. The freedom to provide services in the field of transport is governed by the special provisions of Part Three, Title VI of the Treaty on the Functioning of the European Union (TFEU) relating to transport. A number of activities have been carried on to improve these basic rules, because the passenger rights legislation has been underestimated for a (too) long time.

The transport policy of the EU is presented in the third part. Several programmatic documents of the EU institutions have been adopted, however, they have no legal value outside the EU institutions, but they may have an influence to the activities of other EU institutions to follow them in a legally binding form.

Finally, the fourth part of Judge Ilešič's chapter presents an overview of the EU secondary legislation on passenger transport. Some common legal issues are underlined concerning the application or interpretation of the EU law. The problems of coexistence of the EU rules with the rules of the international law and those of the national legal system are analysed, mostly referring to the case law

(13) Judge and President of Chamber at the Court of Justice of the European Union, Luxembourg. See Pavliha (ed.), 2021, pp. 32-48.

of the CJEU.

5. Carriage by Sea

Professor Norman A. Martínez Gutiérrez⁽¹⁴⁾ recognizes the great importance of carriage of passengers by sea and also by inland waterways. However, acknowledging that the 1976 Convention on the Contract for International Carriage of Passengers and Luggage by Inland Waterway never entered into force and, consequently, that there is no international regime in force regulating the carriage of passengers in inland waterways, he focuses on carriage by sea by providing an overview of the provisions of international treaties as well as European legislation aimed at protecting the interests of passengers carried by sea and safeguarding their rights including: the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the 2002 Protocol thereto; Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents; Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 and Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004; as well as Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC among others.

Moreover, the interplay between the regime created by Athens Conventions and European system for protection of sea passengers' rights is analysed. Finally, it is argued that, despite the apparent advantages brought up by the international and EU instruments, large areas of passenger law and law relevant to the cruise

(14) Director, IMO International Maritime Law Institute, Msida, Malta. See Pavliha (ed.), pp. 49-77.

industry remain to be covered by national consumer laws, hence, states are encouraged to embed the principles discussed in this chapter into their national framework regulating the sea passengers' rights.

6. Carriage by Air

It was my task and privilege to examine the Regulation No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation No 295/91, as well as a few other EU regulations and the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air. My chapter, hopefully, provides a comprehensive overview of the existing legal European and international rules on various air passenger rights and air carriers' liability, and the long-awaited reform.

Furthermore, the most important decisions of the CJEU are presented, especially with respect to delay, the legal concept of extraordinary circumstances which may exempt air carriers from the payment of special compensation in the event of cancellation of flight or delay at arrival, and some other relevant issues, for example the relationship between the Montreal Convention and the EU law. It is argued, inter alia, that the liability exclusion based on extraordinary circumstance favouring large airliners should be replaced by the longstanding stricter doctrine of *vis maior* which would be more fair and beneficial to passengers in light of the rule *in dubio pro consumatore*.

(15) See Pavliha (ed.), 2021, pp. 78-107.

7. Carriage by Rail

Professor Janja Hojnik has dedicated her expertise to the carriage of passengers by rail. For decades, rail struggles to become a competitive sector that is able to compete with other transport modes, such as road and air transport. Passengers' protection was in this respect halted until some basic competition rules have been adopted and enforced. Prof. Hojnik briefly looks at the process of establishing competition on the single railway market, followed by examination of the EU regulatory framework protecting EU rail passengers including the Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations which came into force in December 2009. This Regulation is the central piece of EU legislation containing specific provisions on consumer protection when travelling by rail; it is supposed to build on the existing system of international private railway law contained in Appendix A, i.e. the Uniform Rules Concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) which are part of the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the Modification of the Convention Concerning International Carriage by Rail of 3 June 1999.

Additionally, decisions of the CJEU in this area are discussed. In contrast to the air transport, they are considerably rare and concern issues related to delay and fare without a ticket.

Finally, the proposed (and later adopted) recast of the EU rail passengers' rights legislation is analysed with aspects of the on-going debate within the two EU legislators with the Parliament generally supporting consumers and the Council

(16) Professor of European Union Law, Jean Monnet Professor and Vice-Rector for Quality, Human Resources and Legal Affairs at the University of Maribor, Faculty of Law, Maribor, Slovenia. See Pavliha (ed.), 2021, pp.108-129.

being concerned about the potential financial burden placed on rail operators. It is argued that the level of the rail passengers' protection is closely linked to the level of competition among rail passenger services' providers. Gradual increase of competition on the market, supported by new digital tools, should also increase rights of the rail passengers. Nevertheless, the legislative process on the recast will show how far the EU can currently go in this field.

8. Carriage by Road

Professor Patrick Vlačič⁽¹⁷⁾ examines the rights of passengers during carriage by road. Basic concepts describe the differences between buses and coaches, the modal split of inland passenger transport and the fact that its legal framework for passengers' rights in carriage by road is the most recent to be delineated. A brief history shows the development of bus transport in the 19th and 20th centuries.

Despite the fact that the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (the CVR Convention) of Geneva of 1 March 1973 does not have many contracting parties, it is an important source of law for international road transport. The CVR Convention has never become a part of the EU law, so the first important piece of legislation in this area is Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004. This Regulation provides for a minimum set of rights for passengers travelling by bus and coach within the framework of the EU and includes the following rights: to non-discriminatory transport conditions, to information, compensation and assistance in the event of

(17) Associate Professor of International Maritime Law and Transport Law at the University of Ljubljana, Faculty of Maritime Studies and Transportation, Portorož, Slovenia. See Pavliha (ed.), 2021, pp. 130-148.

accidents, of continuation, re-routing and reimbursement in case of cancellation or long delay, of assistance in case of cancelled or delayed departure, of disabled passengers and passengers with reduced mobility, to submit complaints to carriers and national enforcement bodies, and the enforcement of passenger rights.

9. Conclusion

As it is often the case in edited collections, while each chapter makes a distinctive contribution there are also several common themes and inevitably some overlaps. Should you decide to read our book, please consider it in good faith and in the spirit of the ancient saying *repetitio est mater studiorum*, repetition is the mother of study.

It is nevertheless hoped that the book on passenger rights will serve as an analytical and cohesive compound of various modes of transportation with respect to passenger rights regulated by the EU and international law, thus being more than a mere mixture or collection of contributions (chapters) written by different authors. At the same time, it is intended that each and every chapter can be read individually which might be useful to those readers, scholars and practitioners which are interested only in a particular branch of transportation.

Dear Professor Pejović, dear Časlav, on a personal note I would like to conclude my little contribution to *liber amicorum* in your honor by referring to *ikigai*, a unique Japanese concept which you probably know much better than I but it is nevertheless worth mentioning it again. It means a person's reason for being, my, our, his, her and your life purpose or your bliss, what brings you joy, inspires you to get out of bed every day and makes you live longer and happier. Another wonderful phrase is *ichigo ichie*, to treasure every unrepeatable moment of your life, something like *carpe diem* in Latin.

In this spirit, I wish that you keep on experiencing both of these principles of life, as well as a healthy and peaceful retirement, full of love, flowing experience, creativity and holistic happiness.