

International Maritime and Transport Law Course  
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**TRANSPORT OF PASSENGERS – CARRIER'S CIVIL LIABILITY**

**Liability Issues of Passengers' Sea Carriage  
under International and European Legal Regimes**



Assist. Prof. Iva Tuhtan Grgić  
University of Rijeka, Faculty of Law



&

Zuzanna Peplowska-Dąbrowska, PhD  
Nicolaus Copernicus University in Toruń



NICOLAUS COPERNICUS  
UNIVERSITY  
IN TORUŃ

**International legal framework**

1974 Athens Convention (PAL) (24 states /33.80 % of WT)

1976 Protocol to PAL 1974 (16 states / 33.50 % of WT)

1990 Protocol to PAL 1974 (3 states / 0.16 % of WT)

2002 Protocol to PAL 1974 (Athens Convention relating to the Carriage of  
Passengers and their Luggage or 2002 PAL 2002), (31 states /43.87 % of WT)  
IMO Reservation and Guidelines for the implementation of the Athens  
Convention

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1976 Convention on Limitation of Liability for Maritime Claims (LLMC 76)  
(55 states /51.87 % of WT)

1996 Protocol to LLMC 76 (LLMC 76/96) (63 states /69.13 % of WT)

## European legal framework

**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 **incorporates** relevant provisions of **PAL 2002 (Annex I)**
- Regulation **incorporates and makes binding** parts of **IMO Guidelines**

**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

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**2012/22/EU: Council Decision** of 12 December 2011 concerning the **accession of the European Union to the Protocol of 2002 to the Athens Convention** relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof

**2012/23/EU: Council Decision** of 12 December 2011 concerning the **accession of the European Union to the Protocol of 2002 to the Athens Convention** relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof

## The content of Regulation (EC) No 1177/2010 in brief

### Focused on six main issues:

- non-discrimination between passengers with regard to transport conditions offered by carriers
- non-discrimination and assistance for disabled persons and persons with reduced mobility
- rights of passengers in cases of cancellation or delay
- minimum information to be provided to passengers
- handling of complaints
- general rules on enforcement

Art. 1 of Reg. 1177/2010

**Rights of passengers deriving from  
PAL 2002 and Regulation No 392/2009**

**PAL 2002 / Regulation (EC) No 392/2009 (Annex I)**

- right to compensation for death or personal injury
- right to direct action against the insurer
- right to compensation for loss of or damage to cabin luggage
- right to compensation for loss of or damage to luggage other than cabin luggage
- right to compensation for loss or damage to valuables

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**Regulation No 392/2009 (additional rights)**

- right to compensation in respect of mobility equipment or other specific equipment
- right to an advanced payment
- right to information

**Differences between  
PAL 2002 and Regulation (EC) No 392/2009**

- 1.) scope of application
- 2.) special limitation of liability vs. global limitation of liability
- 3.) additional passengers rights
- 4.) jurisdiction
- 5.) recognition and enforcement of judgements

**Is that a problem?**

## Passenger - definition

**Passenger** means any person carried in a ship

- under a contract of carriage
- who, with the consent of the carrier, is accompanying a vehicle or a live animals which are covered by a contract for the carriage of goods not governed by this Convention

Art. 1/1/4 of PAL 2002 (Annex I to Regulation)

## Liable persons

- **carrier** – a person by or on behalf of whom a contract of carriage has been concluded
  - liable also for acts and omissions of his servants and agents acting within the scope of their employment
  - remains liable for the entire carriage even when the carriage is performed by performing carrier
- **performing carrier** – a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the carriage
  - liable for the part of carriage performed by him
  - liability of the carrier and performing carrier is **joint and several**
  - liable also for acts and omissions of his servants and agents acting within the scope of their employment

Art. 1/1(a) and (b) and 4 of PAL 2002 (Annex I to Regulation)

+ insurer of liability → direct action

## Carriage - definition

- the period during which the passenger is
  - **on board** the ship or
  - in the course of **embarkation or disembarkation**,
  - the period during which the passenger is **transported by water from land to the ship** or vice-versa,
    - if the cost of such transport is included in the fare or
    - if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier.
- with regard to the passenger, carriage does not include the period during which he/she is in a marine terminal or station or on a quay or in or on any other port installation
  - only with regard to luggage taken over by the carrier or his servant or agent

Art. 1/8 of PAL 2002 (Annex I to Regulation)

## Scope of application

### PAL 2002

This Convention shall apply to **any international carriage** if:

- (a) the **ship is flying the flag** of or is **registered in a State Party** to this Convention, or
- (b) the **contract of carriage has been made in a State Party** to this Convention, or
- (c) the place of **departure or destination**, according to the contract of carriage, is **in a State Party** to this Convention.

(Art. 2.1. of PAL 2002)

### Scope of application of Regulation 392/2009

This Convention shall apply to **any international carriage** if:

- (a) the **ship is flying the flag** of or is **registered in a Member State**, or
- (b) the **contract of carriage has been made in a Member State**, or
- (c) the place of **departure or destination**, according to the contract of carriage, is **in a Member State**.

Extends the application to carriage of passengers by sea within a single Member State on board ships of classes A and B.

Art. 1/2 of Regulation

Member States **may apply** this Regulation to **all domestic seagoing voyages**.

Art. 2 of Regulation

### Overlap of the scope of application of PAL 2002 and Regulation 392/2009 – applicable law?

**Regulation 392/2009:**

**PAL 2002:**

Connecting factor:  
Member State

Connecting factor:  
State Party

? Scope: international carriage  
domestic carriage (A and B classes)

Scope:  
international carriage

- a) international carriage **within the MSs of the EU**
  - aa) ship flying flag of the EU / SP / third country
  - bb) contract of carriage made in MS / SP / in third country
- b) international carriage taking place **in MS and SP**
  - aa) ship flying flag of the EU / SP / third country
  - bb) contract of carriage made in MS / SP / in third party
- c) international carriage taking place in **MS and third country**  
...
- d) international carriage taking place exclusively in third countries  
...

## Liability of the carrier for death of and personal injury of passenger and limitation of liability

### Damages caused by shipping incident

(shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship)

**I. tier: strict liability** for damages up to the 250.000 units of account per passenger on each distinct occasion

**Exonerations:** The carrier has to prove that the incident:

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) was **wholly** caused by an act or omission done **with the intent to cause the incident by a third party.**

Art. 3/1 of PAL 2002 (Annex I to Regulation)

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**II. tier: fault based, presumed liability** for damages up to 400.000 units of account per passenger on each distinct occasion

Art. 3/1 and Art.7 of PAL 2002 (Annex I to Regulation)

### The Norman Atlantic case – fire on board the ship 27<sup>th</sup>-28<sup>th</sup> December 2014, Strait of Otranto

**Route:** Patras - Igoumenitsa – Ancona

**Flag:** Italy

**Contracts:** ??

➡ scope of application of the Regulation 392/2009 ?

- contracting carrier: ANEK lines
- 14 passengers dead or missing (+ illegal immigrants)
- 66 passengers with injuries + numerous PTSD
- more than 700 lawsuits

### Liability – shipping incident

**I. tier:** strict liability for damages up to the 250.000 SDR per passenger

**II tier:** fault based presumed liability up to 400.000 SDR per passenger

- investigation showed numerous signs of human error at every level of the emergency response and management system



**The Norman Atlantic case –  
fire on board the ship  
27<sup>th</sup>-28<sup>th</sup> December 2014,  
Strait of Otranto**

**Route:** Patras - Igoumenitsa – Ancona

**Flag:** Italy

**Contracts: ??**

➡ scope of application of the  
Regulation 392/2009 ?



**Out of court settlements**

- cca. 65 % settled their claims (out of court), others filed their claims in the criminal proceeding

**Personal injury** - for passengers found in the water and rescued by boats

- insurer offered €30.000

- possibility of proving additional damages cca. €5.000

**Loss of life** – €500.000 on average (only 5/23 are settled)

**WHY?**

Relatives were asking for an amount higher than 400,000 units of accounts

**Liability of the carrier for death of and personal injury of  
passenger and limitation of liability**

**Damages caused by  
"non-shipping" incident**

- fault based liability – **burden of proof on the claimant**

- up to 400.000 units of account per passenger on each distinct occasion

Art. 3/2 and Art. 7 of PAL 2002 (Annex I to Regulation)

**Examples:** - damage caused by falling down the stairs  
- slipping in the bathroom or near the pool  
- food poisoning  
- damage caused by infectious diseases - COVID-19 on cruise ships



### Liability of the carrier for death of and personal injury of passenger and limitation of liability cont. – case law on infections at cruisers

Nolan and Others v TUI UK Ltd. [2016] 1 Lloyd's Rep. 211: 217 passengers infected by GI, former cruise – 17; claimants: failure to provide clean ship amounted to defect of the ship under art. 3(3) of the Athens 1974 Convention

Court: ship's defect under the 1974 Athens Convention is assimilated with a defect to its structure, *travaux préparatoires* - although no definition, it ought to be given a narrow meaning excluding 'hotel type' defects; a carrier had and proper outbreak response plan.

Swift & Others v Fred Olsen Cruise Lines [2016]: passengers suffered GI on 4 cruises of Boudicca ship, claimants: fault of the carrier – improper implementation of the outbreak response plan

Court: a carrier cannot guarantee infection-free cruise ship; mere outbreak of norovirus is not enough to prove fault, but claimants proved carrier's multiple breakdowns in plan's implementation

### Liability of the carrier for death of and personal injury of passenger and limitation of liability

#### Contributory fault

If the carrier proves that the death of or personal injury to a passenger was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability.

Art. 6 of PAL 2002 (Annex I to Regulation)

The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the **extent of the loss**, shall lie with the claimant.

Art. 3/6 of PAL 2002 (Annex I to Regulation)

## Right to compensation for loss of or damage to cabin luggage

### Damages caused by "non-shipping" incident

- fault based liability – **burden of proof on the claimant**

### Damages caused by shipping incident

- fault based liability - **presumed liability**

Art. 3/2 and Art. 7 of PAL 2002 (Annex I to Regulation)

The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed **2 250 units of account per passenger, per carriage.**

Art. 8/1 of PAL 2002 (Annex I to Regulation)

## Concept of damage to or loss of luggage: only material or material and non-material damage?

- PAL 2002 and Regulation do not contain provision clarifying the concept of damage.
- no judgements of the ECJ

### Possible parallel with Montreal Convention of 1999?

“The term ‘damage’, which underpins Article 22(2) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, that sets the limit of an air carrier’s liability for the damage resulting, inter alia, from the loss of baggage, must be interpreted **as including both material and non-material damage.**”

C-63/09 of 6 May 2010, Walz v. Clickair SA

### **Limitation of liability in case of shared baggage belonging to a number of passengers, but checked in by one of them**

Article 22(2) of the Montreal Convention [...] read in conjunction with Article 3(3) of that convention, must be interpreted as meaning that the right to compensation and the limits to a carrier's liability in the event of loss of baggage **apply also to a passenger** who claims that compensation **by virtue of the loss of baggage checked in in another passenger's name, provided that that lost baggage did in fact contain the first passenger's items.**

C-410/11 of 22 November 2012, Espada Sanchez and others

### **Right to compensation for loss of or damage to luggage other than cabin luggage**

- fault based liability - **presumed liability**  
Art. 3/4 of PAL 2002 (Annex I to Regulation)
- limit of liability - 3 375 units of account per passenger, per carriage.  
Art. 8/3 of PAL 2002 (Annex I to Regulation)
- the loss of or damage to **vehicles** including all luggage carried in or on the vehicle shall in no case exceed **12 700 units of account per vehicle, per carriage**  
Art. 8/2 of PAL 2002 (Annex I to Regulation)

### **Right to compensation for loss or damage to valuables**

The carrier **shall not be liable for the loss of or damage** to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, **except** where such valuables have been **deposited** with the carrier for the agreed **purpose of safe-keeping**

- limitation of liability - **3 375 units of account** per passenger, per carriage

- the carrier and the passenger **may agree, expressly and in writing**, to higher limits of liability than those prescribed

Art. 5 of PAL 2002 (Annex I to Regulation)

### **Loss of right to limit liability**

The carrier **shall not be entitled** to the benefit of the limits of liability, **if it is proved** that the damage resulted from an act or omission of the carrier done with the **intent to cause such damage, or recklessly and with knowledge that such damage would probably result.**

- the same applies to servant or agent of the carrier

Art. 13 of PAL 2002 (Annex I to Regulation)

### **Supplementary provisions on limits of liability**

The carrier and the passenger may agree, expressly and in writing, **to higher limits** of liability than those prescribed in PAL 2002

Art. 10/1 of PAL 2002 (Annex I to Regulation)

### **Limitation of liability and interest on damages & legal costs**

Interest on damages and legal costs **shall not be included in the limits** of liability prescribed in Articles 7 and 8.

Art. 10/2 of PAL 2002 (Annex I to Regulation)

### **Invalidity of contractual provisions concluded before the incident**

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to the passenger's luggage

- purporting to **relieve any person of liability** towards the passenger
- to prescribe a **lower limit of liability**
- to **shift the burden of proof** which rests on the carrier or performing carrier
- having the effect of **restricting the options regarding the jurisdiction and enforcement**  
**shall be null and void.**

Art. 18 of PAL 2002 (Annex I to Regulation)

### **Limitations of compensation - "War risks" IMO Guidelines and Regulation 392/2009**

In the event the claims of individual passengers exceed in the aggregate the sum of 340 million units of **account overall per ship** on any distinct occasion, the carrier shall be entitled to invoke limitation of his liability in the amount of 340 million units of account.

- approx. 420 million Euro

- serious accident of the ship with capacity of more than 6000 passengers
- approximately **60,000 Euro per passenger**
- only **12% of the amount** provided for in the PAL 2002

### **Global limitation of liability, Art. 5 of the Regulation**

This Regulation shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, including any future amendment thereto.

#### **LLMC 76/96, CMC**

Art. 7 - The limit for passenger claims

(1) In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of **175,000 Units of Account (cca 210.000 Euro)** multiplied by the **number of passengers which the ship is authorized to carry** according to the ship's certificate.

- **serious incident on board ship capacity of over 6000 passengers**
  - limitation cca 1.280.000.000 Euro
  - cca **210.000 Euro** per passenger
  - only **50% of the amount** provided for in the Regulation

## PAL 2002 and global limitation of liability

### Other conventions on limitation of liability

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

Art. 19 of PAL 2002

- a) **LLMC 76/96**, Art. 7 (**175,000 Units of Account** multiplied by the **number of passengers which the ship is authorized to carry** according to the ship's certificate)
- b) **LLMC 76**, Art. 7 (**46,666 Units of Account**, on any distinct occasion, multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, **but not exceeding 25 million SDR**)
- c) **the 1957 Convention**, Art. 3./1/(b) where the occurrence has only given rise to personal claims an aggregate amount of **3,100 francs for each ton of the ship's tonnage**; (c) where the occurrence has given rise both to personal claims and property claims [...] first portion amounting to **2,100 francs for each ton of the ship's tonnage** shall be exclusively appropriated to the payment of personal claims

## Compulsory Insurance

### Athens Convention 2002, Regulation 392/2009

- ship **licensed to carry more than twelve passengers** and performing carrier **shall maintain insurance or other financial security** to cover liability in respect of the death of and personal injury to passengers
- insurance **shall not be less than 250 000 units** of account per passenger on each distinct occasion.
- **separate cover for war and terrorism risks** – minimum limit 250.000 SDR per passenger per accident or 340 milion SDR overall per ship per accident, whichever lower (IMO Reservation and Guidelines / Annex II of the Reg.)
- insurance certificate issued by the State of Registry / the issuing State has to be carried on board (Art. 4bis/5 of the PAL 2002) – “blue cards”
- **direct action** against the insurer

## Compulsory Insurance - enforcement

- State Party shall not permit a ship under its flag to which this Article applies to operate at any time unless a certificate has been issued (Flag State Control)
- State Party shall ensure, under its national law, that insurance is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory (Port State Control)

Art. 4bis/12–13 of PAL 2002 (Annex I to Regulation)

## Direct Action

Any claim for compensation covered by insurance or other financial security pursuant to PAL 2002 art. 4bis **may be brought directly against the insurer**

### The insurer's defences:

- insurance limit
- defences which the liable carrier would have been entitled to invoke in accordance with the Convention (exclusion/exoneration from liability)
- the damage resulted from the wilful misconduct of the assured carrier

### But the insurer shall not invoke:



- any other defence which he might have against the assured carrier based on insurance contract
- bankruptcy or winding up of the carrier
- the insurer shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings

Art. 4bis/10 of PAL 2002 / Annex I of the Regulation



## Compulsory Insurance

**Directive 2009/20/EC** of the European Parliament and of the Council of 23 April 2009 **on the insurance of shipowners for maritime claims**

- compulsory liability insurance for **all ships of 300 GT or more** flying EU flag or entering EU port (FSC, PSC)
- maritime claims subject to limitation under the 1996 LLMC up to the amount per ship per incident equal to the relevant maximum amount for the limitation of liability as laid down in the 1996 LLMC
  - direct action?  national law
  - does it help in cases where limitation in line with LLMC 76 or 1957 Convention is invoked?  **NO**

## Time-bar for actions

Any action for damages arising out of the

- a) death of or personal injury to a passenger or
- b) for the loss of or damage to luggage shall be

time-barred after a period of **two years**.

Art. 16 of PAL 2002 (Annex I to Regulation)

### Calculation of the limitation period

- (a) in the case of personal injury, **from the date of disembarkation** of the passenger;
- (b) in the case of death occurring during carriage, from the date when the passenger **should have disembarked**, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, **from the date of death**, provided that this **period shall not exceed three years from the date of disembarkation**;
- (c) in the case of loss of or damage to luggage, from the date of **disembarkation** or from the date when **disembarkation should have taken place**, whichever is later.

### Suspension and interruption of limitation periods

- according to the law of the Court seized of the case (*lex fori*)
- in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:
  - (a) a period of **five years** beginning with the date of **disembarkation** of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier;
  - (b) a period of **three years** beginning with the date when the claimant **knew or ought reasonably to have known of the injury, loss or damage** caused by the incident.

## Jurisdiction, recognition and enforcement of judgements

**Jurisdiction rules:** Art. 10 of PAL 2002

- not incorporated into the Regulation 392/2009

Art. 7/1(b)/2 of Brussels I bis Regulation

**BUT**, in the Recital 4 of the Council decision 2012/23/EU it is prescribed:

- the rules on jurisdiction set out in Article 10 of the **PAL 2002 should take precedence** over the relevant Union rules - where PAL 2002 is applicable

### **Rules on recognition and enforcement of judgments:**

Art. 11 of PAL – not incorporated into the Regulation 392/2009

Brussels I bis Regulation or Lugano Conventions?

- the rules on recognition and enforcement of judgments laid down in Article 11 of the **PAL 2002 should not take precedence** over the Brussels I bis Regulation, or Agreement between the European Community and the Kingdom of Denmark on jurisdiction..., or the rules of the Lugano Convention of 1988 or the Lugano Convention of 2007

## Right to an advanced payment

Where the death of, or personal injury to, a passenger is **caused by a shipping incident**, the carrier who actually performed the whole or a part of the carriage when the shipping incident occurred shall make an **advance payment sufficient to cover immediate economic needs** on a basis proportionate to the damage suffered within **15 days** of the identification of the person entitled to damages.

- in the event of the **death**, the payment **shall not be less than EUR 21.000**.
- **shall not constitute recognition of liability**
- **may be offset** against any subsequent sums paid on the basis of Regulation

Art. 6 of Regulation 392/2009

## Right to an advanced payment – open issues

### 1.) the identification of the person entitled to advanced payment

- who is entitled to damages?
  - heirs? relatives? maintenance creditors?
  - applicable law? eg. spouse / partner in de facto union / same sex spouse, registered same-sex partner, same-sex partner in de facto union, children from all those different family-forms?
  - disputes between relatives / heirs

### 2.) assessment of the amount to be payed?

### 3.) passengers are not aware of their right (limited or no information provided by the carrier)

- Norman Atlantic case:
  - **is request needed or carrier has duty to provide advanced payment?**
  - no advanced payment was offered to persons entitled to advanced payment
  - in Italy first payment was made 4 moths after the incident, whilst in Greece within 1 week after the request being made
  - disputes between relatives

## Right to compensation in respect of mobility equipment or other specific equipment

In cases of loss of, or damage to, mobility equipment or other specific equipment used by a passenger with reduced mobility the carrier shall be liable likewise in cases of damage to cabin luggage

**Damages caused by "non-shipping" incident**  
- fault based liability – **burden of proof on the claimant**

**Damages caused by shipping incident**  
- fault based liability - **presumed liability**

### **NO limitation of liability!**

The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs.

Art. 4 of Regulation 392/2009

### **Right to information to passengers**

- the carrier and/or performing carrier shall ensure that passengers are provided with **appropriate and comprehensible information** regarding their rights under this Regulation
- at least the information contained in a summary of the provisions of this Regulation prepared by the Commission

Art. 7 of Regulation 392/2009

- sanction?

**Thank you for your  
attention!**