

INTERNATIONAL
MARITIME AND
TRANSPORT LAW COURSE

Inter-University Centre –
Dubrovnik, Croatia
5 – 10 September 2022

PrAVri

Pravni fakultet u Rijeci



Limitation of Liability for Maritime Claims
– Solutions in PAL 2002

Assoc. Prof. Iva Tuhtan Grgić



Sveučilište u Rijeci
University of Rijeka

International legal framework and EU MS

1974 Athens Convention (PAL) (25 states / 33.80 % of WT,
3 EU MS - Estonia, Luxembourg, Poland)

1976 Protocol to PAL 1974 (16 states / 33.03 % of WT, 3 EU MS)

1990 Protocol to PAL 1974 (3 states / 0.18 % of WT – not in force)

2002 Protocol to PAL 1974 (Athens Convention relating to the Carriage of Passengers and their Luggage or 2002 PAL 2002), entered into force in April 2014 (31 states / 44.73 % of WT, 18 EU MS + EU)

IMO Reservation and Guidelines for the implementation of the Athens Convention

6 EU MS not parties to the PAL 2002 nor the PAL 1974:
Austria, Cyprus, Check Republic, Italy, Hungary, Germany

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**

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

Comparison:

PAL 1974 / PAL 2002, Regulation 392/2009 Damages caused by "non-shipping" incident

PAL 1974

- fault based liability – burden of proof on the claimant
- 46,666 SDR per passenger, per carriage

PAL 2002, Regulation 392/2009

- fault based liability – burden of proof on the claimant
- up to 400.000 SDR per passenger on each distinct occasion

Compulsory Insurance – not less than 250.000 SDR per passenger on each distinct occasion

Comparison:

PAL 1974 / PAL 2002, Regulation 392/2009

Damages caused by shipping incident

PAL 1974

- **presumed liability**
- **46.666 SDR** per passenger, per carriage

**PAL 2002,
Regulation 392/2009**

- a) **strict liability** for damages up to the **250.000 SDR** per passenger on each distinct occasion
- b) **presumed liability** for damages up to **400.000 SDR** per passenger on each distinct occasion

Shipping incident - shipwreck, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship
+ capsizing

Compulsory Insurance – not less than 250.000 SDR per passenger on each distinct occasion

Liable persons = persons entitled to limit their liability

- **carrier** – a person by or on behalf of whom a contract has been concluded
 - liable also for:
 - acts and omissions of his servants and agents acting within the scope of their employment
 - acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment
- **performing carrier** – carrier who actually performs the carriage
 - liable also for:
 - acts and omissions of his servants and agents acting within the scope of their employment
- **servants and agents** of the carrier and the performing carrier

The **aggregate of the amounts** recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment **shall not exceed the highest amount** which could be awarded against either the carrier or the performing carrier.

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

The carrier has right to limit his liability in respect of death of or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines (war and terrorism related risks) to the lower of the following amounts:

- **250,000 units of account** in respect of each passenger on each distinct occasion;

or

- **340 million units of account** overall per ship on each distinct occasion.

In case of serious incident of the ship with capacity of more than 6000 passengers:

- approximately **56.666 SDR per passenger**
- only **12% of the amount** provided for in the Athens Convention 2002

Special limitation of liability vs. global limitation of liability

Art. 19 of 2002 PAL

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. 5 of the Athens Regulation

Global limitation of liability

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.

Special limitation of liability vs. global limitation of liability

BUT – EU is a contracting party to the 2002 Athens Convention, which is hierarchically above the secondary sources of EU law, meaning also above the Athens Regulation!

1. Which of those provisions should prevail?

ECJ: a provision of an international agreement is directly applicable when contains a **clear, precise and unconditional obligation** which is not subject, in its implementation or effects, to the adoption of any subsequent measure.

2. Is Art. 5 of the Athens Regulation contrary to Art. 19 of the 2002 PAL?

No, they are complementary – 2002 PAL gives the possibility of invoking limitation of liability according to law applicable in the contracting state.

The Athens Regulation overrides the respective provisions of “old” limitation conventions even when they are in force in the EU MS.

- increased unification
- raised level of passengers’ protection

International legal framework – global limitation of liability

- 1924** International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Sea-going Vessels (8 states – **4 EU MS** - Belgium, Hungary, Poland and Portugal)
- 1957** International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Sea-going Vessels and its 1979 Protocol – **2 EU MS**
- 1976** Convention on Limitation of Liability for Maritime Claims (**LLMC 76**) (55 states /57.30 % of WT – **14 EU MS**)
- 1996** Protocol to LLMC 76 (**LLMC 76/96**) (58 states /62.70 % of WT – **all EU MS except Austria, Czech Republic, Slovakia and Italy**)

LLMC 76/96

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 multiplied by the number of passengers which the ship is authorized to carry** according to the ship's certificate.

A serious incident on board ship capacity of 6000 passengers

- limitation 1.050.000.000 SDR
- only 50% of the amount provided for in the Athens Convention 2002

Right to compensation for loss of or damage to luggage

a) Cabin luggage

- limit of liability - **2 250** units of account per passenger, per carriage
 - may be **subject to a deductible** not exceeding 149 units of account

b) Vehicles including all luggage carried in or on the vehicle

- limit of liability - **12 700** units of account per vehicle, per carriage
 - may be **subject to a deductible** not exceeding 330 units of account

Luggage other than a) and b)

- limit of liability - **3 375** units of account per passenger, per carriage
 - may be **subject to a deductible** not exceeding 149 units of account

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

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.**

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.**

3 375 units of account per passenger, per carriage.

Contractual provisions on limitation of liability

- the carrier and the passenger **may agree, expressly and in writing**, to higher limits of liability than those prescribed
- interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.
- **contractual provisions concluded before the incident** prescribing a lower limit of liability shall be null and void

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, but the carrier will not lose his right to limit liability in case when his agent or servant loses it

Amendment of limits

- **special procedure** for the purposes of amending the limits
- upon the request of **at least one half**, but in no case less than six, of the States Parties to the PAL 2002
- proposal of amendment has to be circulated to all Members of the IMO and to all States Parties, and submitted to the Legal Committee of the IMO
- amendments shall be adopted by a **two-thirds majority** of the States Parties to the PAL 2002 present and voting, on condition that at least one half of the States Parties shall be present at the time of voting
- **notification** on the adoption to all State Parties

Amendment of limits

- amendment shall be **deemed to have been accepted** at the end of a period of **eighteen months** after the date of notification, unless within that period not less than **one fourth of the States** that were States Parties at the time of the adoption of the amendment have communicated to the Secretary-General that they **do not accept the amendment**, in which case the amendment is **rejected and shall have no effect**.
- **entry into force - eighteen months** after its acceptance
- All States Parties shall be bound by the amendment, unless they **denounce** this Protocol at least six months before the amendment enters into force
- new State Parties shall be bound by the amendment if it enters into force

**Thank you for your
attention!**