

Introduction

*(...) the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and (...) it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;*¹

Air passenger rights have become one of the most important consumer rights areas since the number of people who are travelling is growing every year.² “Over the last thirty years, there has been a boom in mobility in Europe. For millions of citizens travel has become a reality, indeed a right (...) The air transport sector has seen a number of changes: the emergence of low cost airlines, the restructuring of other airlines, the opening up of new routes, and the availability of information or tickets on the Internet with a general reduction in fares. Millions of people have flown as a result of the setting up of an internal aviation market”.³ According to Vice-President of the Commission Siim Kallas, responsible for transport “passengers need a common set of principles, so that they can be more easily aware of their rights if something goes wrong with their trip, regardless of the mode of transport they use or whether a journey takes place wholly within a single Member State or goes through an intra-Community or external frontier”⁴.

Europe’s success in securing and upholding passenger rights is one of the resounding achievements of the EU transport policy. Therefore, it was

¹ Preamble to Convention on International Civil Aviation, signed at Chicago, on 7 December 1944 (Chicago Convention).

² ECC-Net Air Passenger Rights Report 2011 – in the aftermath of the ‘Volcanic Ash Crisis’, October 2011 (available at http://ec.europa.eu/consumers/ecc/docs/ecc_net_air_passenger_report_2011.pdf).

³ Communication From The Commission To The European Parliament And The Council Strengthening passenger rights within the European Union, Brussels, 16.2.2005 COM(2005) 46 final.

⁴ <http://ec.europa.eu/transport/passenger-rights/en/index.html>

necessary for the European Community to strengthen the rights of passengers and to ensure that air carriers operate under harmonized conditions in a liberalized market. Liberalisation, however, is not enough. Other measures are needed to protect passengers' interests and ensure that they fully profit from the single market.⁵

Air passenger rights can cover the following fields: People with disabilities and people with reduced mobility; Denied boarding; Cancellation; Long delays; Problems with Baggage; Identity of the airline; Package holidays; Price transparency. All these fields are covered by special regulations. Notwithstanding the most controversial and with unclear provisions is Regulation (EC) 261/2004⁶.

Therefore, there is a need to analyse the existing judgments and different theories in legal doctrine regarding this Regulation. It introduced important new rights for air passengers in the event of denied boarding, long delay, cancellations and downgrading. The Regulation took effect on 18 February 2005 and sets a minimum level of quality standards in order to protect passengers. It repealed Regulation (EEC) No. 295/91 and it sets out the entitlements of air passengers when a flight that they intend to travel on is delayed or cancelled, or when they are denied boarding to such a flight due to overbooking, or when the airline is unable to accommodate them in the class they had booked.

It is very important to ensure a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general. As it is stated in Preamble to Regulation 261/2004, denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers and the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays. Therefore, it was necessary for the European Community to strengthen the rights of passengers and to ensure that air carriers operate under harmonized conditions in a liberalized market. It is also stated that the number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding and that passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue

⁵ European Commission, Air – legislation in force since 2005 at: http://ec.europa.eu/transport/themes/passengers/air/index_en.htm

⁶ Official Journal of the European Union, L 46, pp. 1-7 (17-2-2004).

them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.⁷

As IATA indicates, airlines are committed to looking after their passengers, and overlapping passenger rights regimes around the world creates difficulties for the industry and confusion for passengers. The patchwork of regimes defeats the purpose of providing passengers with clear, transparent rights that they can count on. Clear information to passengers on their rights should be the first priority of government and the industry.⁸

In response to this, the industry unanimously adopted a set of principles at the 2013 IATA Annual General Meeting. The principles call on governments to develop consumer protection regulations that:

- Are clear, unambiguous, aligned with international conventions, without extra-territorial implications and comparable with regimes in place for other modes of transport;
- Allow airlines the ability to differentiate themselves through their customer service offerings above a basic common standard;
- Ensure passenger access to information concerning their rights, fares, including taxes and charges, the actual operator of the flight, and regular situational updates in the case of service disruptions;
- Do not compromise the industry's top priority of safety, and exonerate airlines from liability for safety-related delays and cancellations;
- In the case of denied boarding and cancellations, entitle passengers to re-routing, refunds or compensation where circumstances are within the airlines' control;
- In the case of delays, entitle passengers to re-routing, refunds or care and assistance; and acknowledge that when such delays or disruptions are beyond the control of airlines, market forces should determine the care and assistance available to passengers.⁹

These principles offer a way for air transport stakeholders to seek greater convergence in the passenger rights.

On behalf of the industry, at the 38th Session of Assembly IATA presented the Working Paper. On 24 September-4 October 2013, at its 38th triennial Assembly in Montreal, ICAO was hosting national/provincial dignitaries and over 1,000 Ministers and other high-level officials.

⁷ Preamble to Regulation 261/2004.

⁸ <http://www.iata.org/policy/icao-assembly/Pages/icao-passenger-rights.aspx>

⁹ Id.

The goals of the IATA Paper were as follows:

- Request that ICAO, through the appropriate bodies, utilizes the principles in Attachment 1 as the basis for the development of ICAO's high-level non-prescriptive core principles on consumer protection;
- Invite member States to consider incorporating these principles into existing and future passenger rights regimes.¹⁰

Siim Kallas said: "As millions of Europeans prepare to set off for a well deserved holiday this summer, we want to make it as easy as possible for them to travel, knowing that they have rights and how to get support in claiming them if they need to. There can never be too much information. We hope that with eye catching posters in airports across Europe, and using leaflets and online information [in] all EU languages, we can reach out to millions of passengers travelling this summer and in the months to come."¹¹

As part of the Passenger Rights campaign, a website has been launched on <http://ec.europa.eu/passenger-rights> where people are able to find out what their rights are for each of the transport modes in all of the EU's official languages so that it is possible to get informed in their own language. The Commission is working on extending passenger rights to other transport modes.

¹⁰ Id.

¹¹ http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2010/06/20100629_passenger_rights_campaign_en.htm (09 January 2014).