

CARRIAGE OF PASSENGERS IN CROATIA – NATIONAL LEGISLATION AND EU LAW

DRAGAN BOLANČA, Ph.D., Full Professor,
PETRA AMIŽIĆ JELOVČIĆ, Ph.D., Assistant
Faculty of Law, University of Split

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In the Republic of Croatia, the carriage of passengers and luggage by sea is regulated by articles 598-633 of the Croatian Maritime Code (hereafter – CMC). In this part, Croatia adopted the solutions of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL, 1974), the London Protocol of 1976 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL Prot, 1976) and the London Protocol of 1990 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL Prot, 1990). The liability of the carrier is based on proved or presumed fault. His liability for the death of or personal injury to a passenger is limited in all cases to 175,000 Special Drawing Rights (hereafter – SDRs) per passenger and per carriage. Also, the CMC adopts the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC, 1976) and the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC Prot, 1996). According to these acts, in respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, liability of the carrier is limited to 175,000 SDRs multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate. The Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL Prot, 2002) establishes a new liability regime by introducing two tier liability system and adopting strict liability for death and personal injury claims caused by shipping incidents. It requires compulsory insurance in respect of such liability and allows direct action against insurers. The PAL Prot, 2002 will be ratified by the EU as soon as the main obstacles for its implementation are solved. Since the aim of the

Republic of Croatia is to become a member of the EU it is assumed that our country will become a Member State of the PAL Prot, 2002 as well. Before that happens we have to predict legal and economical implications of acceptance of the new convention.

Key words: carriage of passengers by sea; Maritime Code of the Republic of Croatia; liability of the carrier; limitation of liability; Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974; PAL Protocol 1976; PAL Protocol 1990; EU law.

I. INTRODUCTION

The new Croatian Maritime Code was passed on December 8, 2004, and came into force on December 29, 2004.¹ The CMC derogated the old Maritime Code which was in force from March 22, 1994.² The new CMC regulates maritime navigation and encompasses all the law of the sea, administrative law, property law, contract law, incident of navigation and conflict of law rules.³ The CMC extensive text is divided into twelve parts and has 1,032 articles. Part VII (Articles 430-747) deals with contracts (shipbuilding contracts, contracts for the employment of ships, contracts for maritime ship agency services and contracts of maritime insurance). In this connection it should be emphasized that under Croatian law contracts for the exploitation of ships are divided into two groups: maritime contracts, which are contracts for work (*locatio operis*) and hire of a ship (*locatio navis*), which is a contract for using a ship.⁴

1 See "Narodne novine", No. 181/2004.

2 See "Narodne novine", No. 17/94, 74/94 and 43/96. For more details about derogated act see **Dragan Bolanča – Axel Luttenberger**: *Some Views on the New Croatian Maritime Code*, "Zbornik radova Pravnog fakulteta u Splitu", No. 1-2, 1995, pp. 113 – 117, **Dragan Bolanča**: *The New Croatian Maritime Code*, "Acta Juridica Hungarica", Budapest, No. 1-2, 1997, pp. 60-63, **Ivo Grabovac**: *Plovidbeno pravo Republike Hrvatske*, Split, 2003, pp. 11 – 424.

3 About the new CMC see **Ivo Grabovac**: *Suvremeno hrvatsko pomorsko pravo*, Split, 2005, pp. 7 – 243, **Drago Pavić**: *Pomorsko imovinsko pravo*, Split, 2006, pp. 29 – 534, **Axel Luttenberger**: *Pomorsko upravno pravo*, Rijeka, 2005, pp. 13 – 195, **Ivo Grabovac – Ranka Petrinović**: *Pomorsko pravo (pomorsko javno, upravno i radno pravo)*, Split, 2006, pp. 1 – 109, **Dorothea Ćorić**: *Novi Pomorski zakonik*, Collected Papers "Pomorski zakonik Republike Hrvatske i druge novine iz područja pomorskog i prometnog prava", Rijeka, 2005, pp. 9 – 28.

4 The latter contract has been translated as "charter by demise" because this is the nearest to the English system of ship exploitation.

II. CARRIAGE OF PASSENGERS IN CROATIAN LEGISLATION

The carriage of passengers and luggage by sea is regulated by articles 598-633 of the CMC. In this part, Croatia adopted the solutions of the *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* (hereafter – PAL, 1974)⁵, the *London Protocol of 1976 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* (hereafter – PAL Prot, 1976)⁶ and the *London Protocol of 1990 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* (hereafter – PAL Prot, 1990).⁷ In this matter are important also the *Convention on Limitation of Liability for Maritime Claims, 1976* (hereafter – LLMC, 1976)⁸ and the *Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976* (hereafter – LLMC Prot, 1996).⁹

1. Definitions in the CMC

Under a contract for the carriage of passengers, the carrier is under obligation to carry the passenger by a ship, while the passenger undertakes to pay fare (art. 599 of CMC). Of special significance is the fact that the CMC differentiates between the *carrier* who concludes the contract and the *performing carrier* who actually performs the carriage. *Carrier* means a person by or on behalf of whom the contract of carriage has been concluded, whether the carriage is actually performed by him or

- 5 PAL, 1974 was adopted by the Comité Maritime International (hereafter – CMI) and the International Maritime Organization (hereafter – IMO) at Athens on December 13 and came into force on April 28, 1987, having received the approval of ten states as required by art. 24 – see the text by **William Tetley**: *International Maritime and Admiralty Law*, Montreal, 2003, pp. 703-714. In Croatia it came into force on April, 12, 1998 - see “Narodne novine – Međunarodni ugovori”, No. 2/97.
- 6 PAL Prot, 1976 adopted at London on November 19, 1976 and in force as of April 30, 1989 – see the text *ibid*, pp. 703-714. In Croatia it came into force on April 12, 1998 - see “Narodne novine – Međunarodni ugovori”, No. 2/97.
- 7 PAL Prot, 1990 adopted at London on March 29, 1990, but not yet in force. – see the text *ibid*, pp. 715-721. In Croatia it came into force on April 12, 1998 - see “Narodne novine – Međunarodni ugovori”, No. 11/98.
- 8 LLMC, 1976 adopted by the IMO at London on November 19, 1976 and in force as of December 1, 1986 - see text *ibid*, pp. 723-736. In Croatia it came into force on June 1, 1993 - see “Narodne novine – Međunarodni ugovori”, No. 2/92.
- 9 LLMC Prot, 1996 adopted at Geneva on May 3, 1996 (in force as of May 13, 2004) - see the text *ibid*, pp. 737-744. In Croatia it came into force on August 13, 2006 - see “Narodne novine – Međunarodni ugovori”, No. 12/2005. For more details about the LLMC, 1996 and the LLMC Prot, 1996 see **Patrick Griggs – Richard Williams – Jeremy Farr**: *Limitation of Liability for Maritime Claims*, 4 Ed., London – Singapore, 2005, pp. 7-94.

by a performing carrier (art. 598 (1) of the CMC). *Performing carrier* means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage (art. 598 (2) of the CMC). *Passenger* means a person carried in a ship under a contract of carriage or who accompanies a vehicle or live animals which are covered by a contract for the carriage of goods (art. 598 (3) of the CMC). *Luggage* means any article including vehicle carried by the carrier under a contract of carriage, excluding articles and vehicles carried under a charter by demise, bill of lading, luggage receipt or other document of carriage or other contract primarily concerned with the carriage of goods and live animals (art. 598 (4) of the CMC). *Cabin luggage* means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control, including luggage which the passenger has in or on his vehicle (art. 598 (5) of CMC).

2. Liability of the carrier

The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the shortage, loss of or damage to luggage¹⁰ in the incident which caused the damage so suffered occurred in the course of the carriage¹¹ and was due to the fault of the carrier or of his persons acting within the scope of their employment (art. 613 (1) and art. 614 of the CMC). Carrier's liability is based on *proved fault*, because the burden of proving that the incident which caused the loss or damage occurred in the course of the carriage and the limit of the loss or damage, shall lie with the claimant (art. 613 (2) of the CMC). Fault of the carrier shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the shortage, loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship (art. 615 (1) of CMC). So, in the mentioned cases the carrier's liability is based on *presumed fault*. The same solution is provided for shortage, loss of or damage to *other* luggage,

10 Damage to luggage also covers any damage due to delay. It includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from lock-out, strike or similar incidents (art. 598 (6) of CMC).

11 Carriage covers the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are 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. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on quay or in or on any other port installation (art. 627 (1) CMC). With regard to cabin luggage, carriage covers also the period from the time of its taking over by the carrier on shore or on board until the time of its re-delivery by the carrier (art. 627 (2) of CMC).

irrespective of the nature of the incident which caused the loss or damage (art. 615 (2) of CMC). These presumptions are rebuttable if the carrier proves that neither he nor his persons acting within the scope of their employment committed any fault. Contributory fault or unusual behaviour on the part of the passenger, if proven by the carrier, may exonerate the carrier wholly or partially from liability (art. 619 of CMC).

3. Limits of liability

The limits of liability of the carrier are fixed by art. 7 and art. 8 of the PAL, 1974 and expressed in gold francs.¹² The PAL Protocol, 1976 converted this unit of account to SDR.¹³ The PAL Protocol, 1990 increased the limits of liability of the carrier (art. 2) and the CMC adopted these limits. The liability of the carrier for the death of or personal injury to a passenger shall be limited in all cases to 175,000 SDRs per passenger and per carriage (art. 620 (1) of the CMC).¹⁴ But, if the total amount payable to all claimants under this article exceeds the global limitation of liability available to the carrier under arts. 385-400 of the CMC, the carrier may also invoke the latter limitation.¹⁵ According to the LLMC, 1996 (art. 7) and the LLMC Prot, 1996 (art. 4), 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 carrier thereof shall be an amount of 175,000 SDRs multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate (art. 392 (1) of the CMC).¹⁶ The liability of the carrier for damages caused to luggage shall be limited in all cases to 1,800 SDRs per passenger and per carriage (for cabin luggage), 10,000 SDRs per vehicle and per carriage (for vehicle and luggage carried on or in it) and 2,700 SDRs per passenger and per carriage (for other luggage).¹⁷ The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 300 SDRs in the

12 The franc mentioned in this Convention shall be deemed to refer to a unit consisting of 65,5 milligrams of gold of millesimal fineness 900 (art. 9 (1) of PAL, 1974).

13 Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund (see art. 2 (3) of PAL Protocol 1976).

14 When damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit (art. 620 (2) of the CMC).

15 See **Jasenکو Marin**: *Ugovori o prijevozu putnika i prtljage morem*, Zagreb, 2005, pp. 18-19.

16 For the purpose of this article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship: a) under a contract of passenger carriage, or b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods (art. 392 (2) of the CMC).

17 See art. 621 (1) of the CMC.

case of damage to a vehicle and not exceeding 135 SDRs per passenger in the case of loss or damage to other luggage (art. 622 (1) of the CMC), such sum to be deducted from the amount of compensation due to the passenger (art. 622 (2) of the CMC).

The limits of the carrier's liability as prescribed by arts. 620, 621 and 622 may be increased by express agreement in writing between the carrier and the passenger (art. 624 of the CMC). 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 his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in the CMC, except as provided in art. 622, or purporting to shift the burden of proof which rests on the carrier, shall be null and void (art. 631 of the CMC).

The persons in the service of the carrier shall be entitled to the benefit of the exemption or limitation of liability to which the carrier is entitled, if they prove that acted within the scope of their employment (art. 626 (1) of the CMC).

The limitations under the CMC can be broken only by proving that the damage resulted from an act or omission of the carrier done with the intent to cause the damage or recklessly and with knowledge that the damage would probably result (art. 623 of the CMC).¹⁸ The CMC provides the same solution for persons in the service of the carrier - art. 626 (2).

III. CARRIAGE OF PASSENGERS IN EU LAW

At present, there is no Community legislation in European Union regulating liability for transport of passengers by sea. These issues are governed by two sets of law: the internal law of the Member States and the international law for those Member States that have ratified the LLMC, 1976¹⁹ or the LLMC Prot, 1996.²⁰ So it is to be concluded that the protection of passengers varies between Member States, depending on what international conventions, and which amendments to them, have been ratified by the State in which the claim is settled.²¹

18 This rule, derived from the Warsaw Convention of 1929, is also found in the modern carriage of goods conventions (see art. 4 (5)e of the Hague-Visby Rules of 1924/1968 and art. 8 (1) of the Hamburg Rules of 1978). This rule has been interpreted to mean that the carrier's right to limit is lost only where the damage is caused by his own intent or recklessness with knowledge, and therefore will not be affected by any international act or knowing recklessness on the part of his servants or agents, unless they are acting as the carrier's *alter ego* - Tetley, *op. cit.*, p. 544.

19 Maximum amount of reparation per passenger under LLMC, 1976 is 46,666 SDR with a global limitation of 25 million SDR.

20 Maximum amount of reparation per passenger under the LLMC Prot, 1996 is 175,000 SDR:

21 **2005/0241(COD)** Draft Report on the proposal for a regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea and inland waterways in the event of accidents – first reading, p.10.

In the opinion of the European Commission none of the applicable conventions or protocols can give an adequate protection to passengers on board ships because their limits of liability are not high enough. Also, none of them stipulate a strict liability for the carrier or include a compulsory insurance with a right of direct action against insurers up to specified limits. The Commission believes that besides these three key elements, national carriage²² should also form part of a maritime passengers liability regime in the EU. These suggestions were included in the Commission's Communication of March 25, 2002. (COM(2002)158 final)²³ which coincided with the revision of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974.

The Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 was adopted on November, 1, 2002 (hereafter – PAL Prot, 2002).²⁴ PAL Prot, 2002 applies to all seagoing vessels, with the exclusion of air-cushion vehicles. The Convention is applicable 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 State Party to this Convention.

The PAL Prot, 2002 makes a distinction between two types of claims. The loss suffered as a result of the death of or personal injury to a passenger caused by the operation of the ship and where the possibility of passengers to control the event is limited, such as shipping incidents,²⁵ is subject to a strict liability regime,²⁶ while other categories of personal injury damage are subject to fault based liability system.²⁷

22 Liability regime should cover all transport in the Community, including carriage within a single Member State.

23 See: www.europarl.eu

24 PAL Prot, 2002 should enter into force 12 months after being accepted by 10 States, which is not yet the case – see the text by **Griggs – Williams - Farr**, *op. cit.*, pp. 111-132.

25 Shipping incident means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship.

26 This is one of the most important differences compared to the previous PAL Protocol because, as already mentioned, the PAL Prot. 1990 applies the fault – based liability regime. The carrier is liable, unless he proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or was wholly caused by an act or omission done with the intent to cause the incident by a third party.

27 The carrier is liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect lies with the claimant.

The limits of liability for death or personal injury of a passenger have been raised significantly compared to limits from PAL Prot, 1990. The Convention also sets two limits:²⁸

- 250,000 SDRs for strict liability;
- 400,000 SDRs for fault based liability²⁹

The carrier shall not be entitled to the benefit of these 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.³⁰

The liability of the carrier for the loss of or damage to cabin luggage is limited to 2,250 SDRs per passenger and per carriage, while the liability for loss of or damage to other luggage is limited to 3,375 SDRs per passenger and per carriage.³¹

One more novelty of the PAL Prot, 2002 is the compulsory insurance. Article 4bis of this Protocol requires carriers to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the limits for strict liability under the Convention in respect of the death of and personal injury to passengers.³²

The Commission considered it satisfying in regard of all requirements set before³³ and on June 24, 2003 presented a proposal for a Council decision concerning the conclusion by the European Community of the PAL Prot, 2002 (COM(2003)0375 final) in which it is proposed that the Community should become a Contracting Party to this Protocol as soon as possible³⁴ and that the Member States shall do likewise

28 The Protocol allows a State Party to regulate by specific provisions of national law the limit of liability for personal injury and death, provided that the national limit of liability is not lower than that prescribed in the Protocol. (so called – **“Opt-out” Clause**)

29 If the loss exceeds the limit, the carrier is further liable up to a limit of 400,000 SDR per passenger on each distinct occasion, unless he proves that the incident which caused the loss occurred without the fault or neglect of the carrier. This is more severe solution compared to the previous PAL Prot, which established the liability limits per passenger and per carriage.

30 See: article 13. of the PAL Prot, 2002. This formulation is also accepted in the former PAL Prot, the LLMC 1976. and the LLMC Prot, 1996..

31 Limits were increased for 25 % compared to the limits from the PAL Prot, 1990.

32 More about compulsory insurance with a right of direct action against insurers: **Marija Pospišil – Miler**, *Atenska konvencija o prijevozu putnika i njihove prtljage morem 2002. godine*, “Poredbeno pomorsko pravo”, Zagreb, No. 158, 2004., p. 239. – 244.

33 Tetley, W., *o.c.*, p.548.

34 Article 19 of the PAL Prot, 2002 gives a possibility for Regional Economic Integration Organizations to become Contracting Parties, which is the first time this has been done in an IMO instrument. A Regional Economic Integration Organization which is a party to this Protocol will have the rights and obligations of a State Party to the extent that the Regional Economic Integration Organization has competence over matters governed by this Protocol. Articles 10 and 11 of the PAL Prot, 2002 provide for rules on the jurisdiction and the recognition and enforcement of judgments given in accordance with the PAL Prot, 2002. However, for these matters the

before the end of 2005.³⁵ Unfortunately, by the end of 2005. no progress has been made on this proposal.

Finally, on November 23, 2005 the Commission presented its proposal for a Regulation of the European Parliament and of the Council on the Liability of Carriers of Passengers by Sea and Inland Waterways in the Event of Accidents (COM(2005)0592 final). This proposal aims at incorporating the Athens Convention into European Community law, but it also brings some adaptations to it. The scope of the proposed Regulation is wider compared to the scope of the PAL Prot, 2002. It covers the scope of the Athens Convention, but is extended to carriage within a single Member State and traffic on inland waterways. The Regulation also removes the possibility for a Member State under the PAL Prot, 2002 of increasing limits of liability and fixing it higher than those provided for in the Convention.³⁶

On February 24, 2006 the Commission transmitted to the European Parliament and the Council the above mentioned proposal as part of its third maritime package. As the answer to it, on September 22, 2006 the European Parliament in its Draft Legislative Resolution on the proposal for a regulation of the European Parliament and the Council on the liability of carriers of passengers by sea and inland waterways in the event of accidents (COM(2005)0592 – C6-0057/2006 – 2005/0241(COD)) approved the Commission proposal with certain amendments. The first amendment by the Parliament postpones the application of the proposal on domestic carriage by regular ferry lines for two years after the date of its entry into force or from the date of the entry into force of the PAL Prot, 2002 for the Community, whichever is the later.³⁷ In relation to carriage by inland waterways, the second amendment postpones the application of the proposal for four years from the date of its entry into force or from the date of the entry into force of the PAL Prot, 2002 for the Community, whichever is the later.³⁸ On December 1, 2006, the Council also gave its progress report on the proposal in which it expressed the same concerns as the Parliament, but pointed out that the European Parliament opinion on the proposal is expected to be adopted in

Community has, through the adoption of Regulation 44/ 2001 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters on December, 22, 2000, acquired exclusive competence. This Regulation is binding upon all European Union Member States with the exception of Denmark. Considering the fact that articles 10 and 11 affect Regulation 44 / 2001 Member States cannot, outside the framework of the Community institutions, assume obligations with third countries relating to those articles. More extensively about Regulation 44 / 2001: **Henrik Ringbom**: *EU Regulation 44 / 2001 and its Implications for the International Maritime Liability Conventions*, Journal of Maritime Law and Commerce, Vol. 35, No.1, January 2004., p. 24. – 28.

35 The text of a Proposal for a Council Decision COM(2003)375 final: www.europarl.eu

36 The Community trusts that this way a total uniformity of limits of liability within the EU will be achieved.

37 Different deadline for domestic ferry lines should be offered to carriers to ensure efficient and financially sustainable civil liability coverage.

38 Even longer deadline for carriage by inland waterways is necessary because carriers are not covered by P & I clubs.

2007. On April 25, 2007, the Position of the European Parliament was, in fact, adopted at the first reading with a view to the adoption of Regulation (EC) No.../2007 of the European Parliament and the Council on the liability of carriers of passengers by sea in the event of accidents. This way, the European Parliament and the Council of the European Union have adopted the Regulation which established a Community regime of uniform liability for the carriage of passengers by sea.³⁹ The scope of this Regulation is wider compared to the scope of the PAL Prot, 2002. As mentioned before, it covers its scope but it is extended to carriage within a single Member State and the traffic on inland waterways (article 1). In order to have a total uniformity within the EU, the possibility for Member States under the PAL Prot, 2002 of fixing limits of liability higher than those provided for in the Convention was removed (article 4). The carrier has the obligation of advance payment in the event of the death of or personal injury to a passenger resulting from a shipping incident or accident. An advance payment must be paid within 15 days from the date of the identification of the person entitled to damages in the amount sufficient to cover immediate economic needs, but it shall not constitute the recognition of liability. This payment is not refundable except where the person who received it was not the person entitled to compensation or the carrier is deemed not at fault (article 5). The carrier, the performing carrier and/or the tour operator shall provide passengers, prior to their departure, with appropriate, full and comprehensible information regarding their rights under this Regulation, and in particular with information on the limits of compensation for death, personal injury or loss of and damage to luggage, on their right of direct action against the insurer or the person providing financial security and on their entitlement to an advance payment (article 6). The latest shift concerning this Regulation was undertaken in Brussels on November 29 – December 3, 2007 when the Transport, Telecommunications and Energy Council took place. The Council reached a Political Agreement (15587/07)⁴⁰ on a proposal for a Regulation on the liability of carriers of passengers by sea and

39 The Regulation has 8 articles and 2 Annexes: PAL Prot, 2002 and **IMO reservation and guidelines for implementation of the PAL Prot, 2002** adopted by the Legal Committee of the IMO on October, 19, 2006 at its 92nd session. www.imo.org The Legal Committee adopted the text of a reservation, intended for use as a standard reservation, to the PAL Prot, 2002 and Guidelines for its implementation, to allow limitation of liability in respect of claims relating to war or terrorism. The aim is to put States in a position to ratify the PAL Prot, 2002 and afford passengers better cover. According to the text of this reservation, the Government concerned reserves the right to and undertakes to limit liability to 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. This relates in particular to war insurance which, under the Guidelines, shall cover liability, if any, for loss suffered as a result of death or personal injury to a passenger caused by: - war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power; - capture, seizure, arrest restraint or detainment, and the consequences thereof or any attempt thereat; - derelict mines, torpedoes, bombs or other derelict weapons of war; - act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk; - confiscation and expropriation.

40 The Italian delegation indicated that it would vote against.

inland waterways in the event of accidents, incorporating the main provisions of the PAL Prot, 2002 into EU law.⁴¹ Compared to the initial Commission proposal, the text agreed by the Council contains some changes that concern the scope,⁴² the relation between the regulation and the other international conventions on global limitation of liability and the transitory provision of this Regulation.⁴³ This Regulation has not entered into force yet, but the article 8 foresees that it shall happen on the (...) day following that of its publication in the *Official Journal of the European Union*. It shall apply from the date of its entry into force of the PAL Prot, 2002 for the Community. This Regulation shall be binding in its entirety and directly applicable in all Member States. When this occurs passengers will be provided with adequate protection which is one of the main goals of the Community's maritime safety policy.

IV. CONCLUSION

In the Republic of Croatia, the carriage of passengers and luggage by sea is regulated by articles 598-633 of the Croatian Maritime Code. In this part, Croatia adopted the solutions of the *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* (PAL, 1974), the *London Protocol of 1976 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* (PAL Prot, 1976) and the *London Protocol of 1990 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* (PAL Prot, 1990). The carrier's liability is based on proved or presumed fault. The liability of the carrier for the death of or personal injury to a passenger is limited in all cases to 175,000 SDRs per passenger and per carriage. Also, the CMC adopts the *Convention on Limitation of Liability for Maritime Claims, 1976* (LLMC, 1976) and the *Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976* (LLMC Prot, 1996). According to these acts, in respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the liability of the carrier is limited to 175,000 SDRs multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate. The *Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974* (PAL Prot, 2002) altered radically the previous Convention and the Protocols to it. It establishes a new liability regime by introducing two tier liability system and adopting strict liability for death and personal injury claims caused by

41 The Council will adopt its common position at one of its forthcoming meetings after finalisation of the text and will forward it to the European Parliament for a second reading in the framework of the codecision procedure. This Regulation incorporates and makes binding parts of the IMO Guidelines.

42 Delegations agree on the exclusion of inland waterways from the scope of the Regulation.

43 Member States may choose to defer application of the Regulation until four years after its date of application.

shipping incidents. It requires a compulsory insurance in respect of such liability and allows direct action against insurers. The aim of the Republic of Croatia is to become a member of the EU whose intention is to ratify the PAL Prot, 2002 as soon as the main obstacles for its implementation are solved. Very important step towards that goal is made on April 25, 2007 when the European Parliament and the Council of the European Union adopted the Regulation which incorporates the relevant provisions of the PAL Prot, 2002 and extends the application of those provisions to carriage by sea within a single Member State. Besides that, it also contains some additional provisions of the PAL Prot, 2002 in order to achieve complete uniformity within the EU as well as suitable protection for passengers. Having all this in mind, we have to predict legal and economical implications of acceptance of the new convention before we actually do it, because this legal question is, clearly, of special interest and significance for the Republic of Croatia as a maritime and tourist country.⁴⁴

44 **Marija Pospíšil-Miler:** *Granice odgovornosti pomorskog prijevoznika za smrt i ozljede putnika po novom Pomorskom zakoniku u odnosu na rješenja na međunarodnoj razini*, Collected Papers “Pomorski zakonik Republike Hrvatske i druge novine iz područja pomorskog i prometnog prava”, Rijeka, 2005, pp. 107-127, Dorotea Ćorić, *Novi pomorski zakonik*, Collected Papers “Pomorski zakonik Republike Hrvatske i druge novine iz područja pomorskog i prometnog prava”, Rijeka, 2005, pp. 9 – 28.

Sažetak:

PRIJEVOZ PUTNIKA U REPUBLICI HRVATSKOJ – NACIONALNA LEGISLATIVA I PRAVO EUROPSKE UNIJE

U Republici Hrvatskoj prijevoz putnika i prtljage morem reguliran je člancima 598. – 633. Pomorskog zakonika. Republika Hrvatska je uskladila svoje odredbe s rješenjima Atenske konvencije o prijevozu putnika i prtljage morem iz 1974. g., te Protokola iz 1976. g., i 1990. g. o izmjeni Atenske konvencije o prijevozu putnika i prtljage morem. Prijevoznikova odgovornost se temelji na dokazanoj ili pretpostavljenoj krivnji. Njegova je odgovornost za smrt i tjelesnu ozljedu putnika ograničena na iznos od 175 000 Posebnih prava vučenja (PPV) po putniku i putovanju. Pomorski je zakonik, također, usvojio Konvenciju o ograničenju odgovornosti za pomorske tražbine iz 1976. g. s pripadajućim Protokolom iz 1996. g. prema kojem je, u slučaju tražbina zbog smrti ili tjelesnih ozljeda putnika na brodu, granica odgovornosti prijevoznika iznos od 175 000 PPV pomnoženih brojem putnika koje je brod ovlašten prevoziti na temelju upisnog lista. Protokol iz 2002. g. o izmjeni Atenske konvencije o prijevozu putnika i prtljage morem utemeljuje novi dvostupanjski sustav odgovornosti propisujući, u prvom stupnju, objektivnu odgovornost prijevoznika za smrt i tjelesne ozljede putnika koje su posljedica pomorske nezgode. Protokol uvodi i obvezno osiguranje od odgovornosti za štete zbog smrti i tjelesne ozljede putnika kao i pravo na izravnu tužbu protiv osiguratelja odgovornosti. Za očekivati je da će EU ratificirati ovaj Protokol čim se uklone smetnje koje onemogućuju njegovu primjenu. Kako je cilj Republike Hrvatske pristupanje EU, pretpostavlja se da će i naša država postati članicom navedenog Protokola. Prije nego li do toga doista i dođe, trebalo bi detaljno ispitati sve pravne i ekonomske implikacije njegova prihvaćanja.

Ključne riječi: *prijevoz putnika morem; Pomorski zakonik Republike Hrvatske; odgovornost prijevoznika; ograničenje odgovornosti; Atenska konvencija o prijevozu putnika i prtljage morem, 1974.; Protokoli iz 1976. i 1990. o izmjenama Atenske konvencije o prijevozu putnika i prtljage morem, 1974.; pravo Europske unije.*

