



Air Carrier Liability

Ewelina Książek-Janik





Agenda

1. A Multilevel Legal Framework: Montreal Convention 1999, Regulation 261/2004, Polish Act on Aviation Law (Prawo lotnicze).
2. Types of damages: personal injury, accidents, and baggage claims, delays, cancellations, and denied boarding.
3. Compensation: Lump sums (250/400/600 EUR), Limitations (Baggage irregularities – 1.519 SDRs).
4. Differences Between Regulation 261/2004 and the Montreal Convention 1999.
5. Judgements of The Court of Justice of The European Union.
6. Pre-Litigation Claim Settlement.
7. Jurisdiction.
8. Conclusions.

Montreal Convention 1999

- Regulates airline liability for personal injury, baggage loss, and delays.
- Compensation limits based on Special Drawing Rights (SDR).
- Replaced the Warsaw Convention 1929.

Regulation (EC) 261/2004

- Establishes passenger rights for delays, cancellations, and denied boarding.
- Fixed compensation amounts depending on flight distance and delay time.
- Airlines are exempt if disruptions occur due to extraordinary circumstances.

Polish Act on Aviation Law (Prawo lotnicze).

- Regulates civil aviation in Poland, ensuring compliance with EU and international law.
- Governs airspace use, safety regulations, liability for accidents, and passenger rights.

Montreal Convention 1999

Special Drawing Rights (SDRs) are supplementary foreign exchange reserve assets defined and maintained by the International Monetary Fund (IMF).

| Damage | Special Drawing Rights | USD |
|--|------------------------|-------------------|
| The limit for death or bodily injury | 151,880 SDRs | about US\$202,500 |
| The limit for any delay in passenger transport | 6,303 SDRs | about US\$8,400 |
| The limit for destruction, loss, damage, or delay of baggage | 1,519 SDRs | about US\$2,000 |
| The limit for destruction, loss, damage, or delay of cargo | 26 SDRs per kilogram | about US\$35 |

Regulation 261/2004:

| Length of the flight | Compensation amount |
|---------------------------------|---------------------|
| Flights less than 1,500 km | €250 |
| Flight between 1,500 - 3,500 km | €400 |
| Flights over 3,500 km | €600 |

| Flights Covered by European Law | | |
|--|------------|----------------|
| Flight Itinerary | EU Airline | Non-EU Airline |
| Flight arrives and departs from the EU | ✓ | ✓ |
| Departs from the EU, arrives elsewhere | ✓ | ✓ |
| Departs from outside the EU, arrives in EU | ✓ | ✗ |
| Departs and arrives outside the EU | ✗ | ✗ |



Differences Between Regulation 261 and the Montreal Convention

1. Lump Sum vs. Documented Damage.
2. Limitation Periods.
3. Scope of Application.

| Country | Limitation period |
|---------|-------------------|
| Poland | 1 year |
| Spain | 5 years |
| France | 5 years |
| Ireland | 6 years |
| Italy | 2 years |
| Norway | 3 years |
| Greece | 5 years |

Article 31 Montreal Convention

In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the **damage**, and, at the latest, within **seven days** from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of **delay**, the complaint must be made at the latest within **twenty-one days** from the date on which the baggage or cargo have been placed at his or her disposal.

Article 35 Montreal Convention

The right to damages shall be extinguished if an action is not brought within a period of **two years**, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

Court of Justice of the European Union Judgements

Case C-394/14, Sandy Siewert and Others v Condor Flugdienst:

Article 5(3) [...] must be interpreted as meaning that a situation where, as in the case before the referring court, **an airport's set of mobile boarding stairs collides with an aircraft cannot be categorised as 'extraordinary circumstances'** exempting the air carrier from its obligation to pay the passengers compensation in the event of a long delay to a flight operated by that aircraft.

C-257/14, Corina van der Lans V Koninklijke Luchtvaart Maatschappij NV:

Article 5(3) [...] must be interpreted as meaning that a **technical problem**, such as that at issue in the main proceedings, which occurred unexpectedly, which is not attributable to poor maintenance and which was also not detected during routine maintenance checks, **does not fall within the definition of 'extraordinary circumstances'** within the meaning of that provision.

Case C-12/11, Denise McDonagh v Ryanair Ltd:

Article 5 [...] must be interpreted as meaning that circumstances such as the closure of part of European airspace as a result of **the eruption of the Eyjafjallajökull volcano constitute 'extraordinary circumstances'** within the meaning of that regulation which do not release air carriers from their obligation laid down in Articles 5(1)(b) and 9 of the regulation to provide care.



Court of Justice of the European Union Judgements

In Case C-411/23, REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), made by decision of 26 May 2023, received at the Court on 3 July 2023, in the proceedings D. S.A. v P. S.A.

1. Article 5(3) of Regulation (EC) 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 (EEC) No 295/91, must be interpreted as meaning that the **detection of a hidden defect in the design of the engine of an aircraft which is to operate a flight is covered by the concept of ‘extraordinary circumstances’** within the meaning of that provision, even where the engine manufacturer had informed the air carrier of the existence of a defect of that kind several months before the flight concerned.
2. Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that an air carrier may, as part of ‘all [the] reasonable measures’ which it is required to take in order to prevent the occurrence and the consequences of an **‘extraordinary circumstance’** within the meaning of that provision, such as the **detection of a hidden defect in the design of the engine of one of its aircraft, adopt a preventive measure consisting of having a back-up fleet of aircraft on standby, provided that that measure is technically and economically feasible in the light of the carrier’s capacities at the relevant time.**

Court of Justice of the European Union Judgements

Case C-452/13, Germanwings GmbH v Ronny Henning:

Articles 2, 5 and 7 of Regulation (EC) 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 (EEC) No 295/91, must be interpreted as meaning that the concept of ‘arrival time’, which is used to determine the length of the delay to which passengers on a flight have been subject, **refers to the time at which at least one of the doors of the aircraft is opened**, the assumption being that, at that moment, the passengers are permitted to leave the aircraft.

Case C-315/15, Marcela Pešková, Jiří Peška v Travel Service a.s.:

Article 5(3) of Regulation No 261/2004, read in the light of recital 14 thereof, must be interpreted as meaning that, in the event of a delay to a flight **equal to or in excess of three hours in arrival** caused not only by extraordinary circumstances, which could not have been avoided by measures appropriate to the situation and which were subject to all reasonable measures by the air carrier to avoid the consequences thereof, but also in other circumstances not in that category, the delay caused by the first event must be deducted from the total length of the delay in arrival of the flight concerned in order to assess whether compensation for the delay in arrival of that flight must be paid as provided for in Article 7 of that regulation.



Court of Justice of the European Union Judgements

Case C-63/09, Axel Walz v Clickair SA:

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.**



Pre-Litigation Claim Settlement

- Filing complaints with airlines directly (website form).



- An airline has to answer within **30 days** (261/2004 claims) or **14 days** – other claims including baggage claims.
- Mediation with European Consumer Centres.

Pre-Litigation Claim Settlement

Austria - Bundesministerium für Verkehr, Innovation & Technologie ObersteZivilluftfahrtsbehörde

Belgium- Direction Générale Transport Aérien

Czech Republic - Ministry of Transport Civil Aviation Department

Denmark - Statens Luftfartsvæsen

France - Direction de la régulation économique Bureau de la facilitation et des clients du transport aérien

Germany - Luftfahrt-Bundesamt (LBA)

Greece - Hellenic Civil Aviation Authority

Ireland - Commission for Aviation Regulation

Italy - L'Ente Nazionale per l'Aviazione Civile

Spain - Dirección General de Aviación Civil Sección de Atención al Usuario

Sweden - Consumer Protection Agency

UK - Air Transport Users Council

Saudi Arabia - GACA (General Authority of Civil Aviation)

USA - DOT (U.S. Department of Transportation)

Canada - CTA (Canadian Transportation Authority)

Poland – ULC (Urząd Lotnictwa Cywilnego)





Jurisdiction

- Regulation 261/2004

In the country where the flight was scheduled to depart or arrive.

- Montreal Convention:

In the country where the carrier is domiciled, where the passenger's destination is located, or where the flight took off.



Thank you!

Ewelina Książek-Janik

e.ksiazek-janik@pgl.pl

