

Passenger Right in Civil Aviation in the Republic of Albania



Civil Aviation

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Abstract

Civil Aviation Authority of Albania is obliged to ensure a high level of protection for passengers. Denied boarding and cancellation or long delay of flights because serious trouble and inconvenience to passengers, therefore passengers should be fully informed of their rights in order to be compensated rightly. Notwithstanding the right of compensation, the passengers should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions. Air carriers should also consider and meet the special needs of persons with reduced mobility and any persons accompanying them. The liability versus civil aviation passenger lies with the operating air carrier who performs or intends to perform a flight, whether with owned aircraft, under dry or wet lease, or on any other basis. The operating air carrier is excluded from its liability in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier according to the Montreal Convention.

1. Introduction

Civil Aviation Authority of Republic of Albania is the competent designed authority to guarantee the protection of passengers' rights in civil aviation according to the stipulations of the Law No. 10 040, date 22.12.2008 "Air Code of Republic of Albania", as amended. In light of this, Civil Aviation Authority of Albania is obliged to develop all necessary measures in order to guarantee the protection of passengers' rights in civil aviation. It is the sole competence of Civil Aviation Authority, in case of administrative offence affecting passenger rights, to fine the Albanian operating air carriers.

Article 138/1 of Albanian Air Code stipulates the need to enact a bylaw which should regulate specifically and in details the passengers' rights in this area. This bylaw should also respect the international obligations, especially the European Civil Aviation Agreement. (ECAA Agreement).

Regulation 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 is being transposed in Albanian law by Bylaw No. 1 date 26.02.2013 "On compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights". Except the preamble of the Regulation No 261/2004, which is not included in the text of Albanian bylaw, the acts have the same content.

Bylaw No 1 date 26.02.2013 (hereinafter Bylaw) "On compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights" rules the passenger's rights in case of: a) denied boarding; b) cancellation of flight; c) long delay of flights. These rules are applicable for passengers who:

1) have a confirmed reservation on the flight concerned and, except in the case of cancellation, present themselves for check-in as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time; or

2) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.

It is very important to have a clear perception of the content of this bylaw, in order to ensure a high level of protection of passengers' rights. It is also important to understand the exemptions of operating air carriers to compensate the passengers, in other words to respect correctly the law.

1.1 Denied boarding

Meaning of denied boarding is given in article 2(j) of Bylaw. According to this stipulation, "denied boarding" means a refusal to carry passengers on a flight against their will, although they have presented themselves for boarding, except where there are reasonable grounds to deny them boarding. The article indicates as reasonable grounds to deny boarding reasons of health, safety or security, or inadequate travel documentation. It is important to be noted that, in using the expression 'such as', the intent is to provide a non-exhaustive list of the situations in which there are reasonable grounds for denying boarding, in other words may be other reasonable grounds to deny boarding. None the less, it cannot be inferred from such wording that there are reasonable grounds to deny boarding on the basis of an operational reason.

When the operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. The passengers in this case are entitled to benefits abovementioned and also to assistance in accordance with Article 8.

If an insufficient number of volunteers come forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will compensating them immediately in accordance with article 7. (According to Article 7, the compensation amount differs from the distance). Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight. Articles 8 and 9 of that regulation, read in conjunction with Article 4 thereof, provide a right to reimbursement or re-routing and a right to care for passengers who are denied boarding.

According the Court of Justice in the Case C-321/11, the concept of "denied boarding" must be interpreted as meaning includes a situation where, in the context of a single contract of carriage involving a number of reservations on immediately connecting flights and a single check-in, an air carrier denies boarding to some passengers on the ground that the first flight included in their reservation has been subject to a delay attributable to that carrier and the latter mistakenly expected those passengers not to arrive in time to board the second flight.

In the denied boarding concept are included all situations which in no way are attributable to the passenger to whom boarding is denied. On the other hand it is unacceptable that an air carrier may increase considerably the situations in which it would have reasonable grounds for denying a passenger boarding.

Scrutinizing the Bylaw, it is notable that the definition of "denied boarding" covers broadly all circumstances in which an air carrier may refuse to carry a passenger. Limiting the scope of 'denied boarding' exclusively to cases of overbooking, would have the practical effect of substantially reducing the protection afforded to passengers under the bylaw, therefore a broad interpretation of the rights granted to passengers is justified.

1.2 Cancellation of Flight

According to article 2 (l) "cancellation" means the non-operation of a flight which was previously planned and on which at least one place was reserved.

In my opinion, first of all it should be bearded in mind that the meaning of 'flight' consists in an air transport operation, performed by an air carrier which fixes its itinerary. This concept was elaborated by the Court of Justice in Case C 173/07, paragraph 40. Thus, the itinerary is an essential element of the flight, as the flight is operated in accordance with the carrier's pre-arranged planning. Very often the situation when a flight is cancelled and when is delayed is been confused.

A flight is considered to be delayed when is not been respected the departure time (departure time is later than the scheduled departure time) and the other elements pertaining to the flight remain unchanged.

On the other hand, according to Article 2(l) of Bylaw, flight cancellation, unlike delay, is the result of non-operation of a flight which was previously planned. Consequently, in a situation where passengers are carried on a flight whose departure time is later than the departure time originally scheduled, the flight can be classified as 'cancelled' only if the air carrier arranges for the passengers to be carried on another flight whose original planning is different from that of the flight for which the booking was made.

Therefore it cannot be concluded if a flight is delayed or cancelled according to the notification of the airport departures board or the air carrier's staff.

When the flight is been cancelled, the passenger has the right of compensation in accordance with article 7 unless is been informed about the cancellation at least two weeks before the scheduled time of departure or between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival. The operating air carrier is also obliged in case of cancellation of a flight, to offer assistance in accordance with the stipulations of article 8 and 9 of the Bylaw.

The operating air carrier shall not be obliged to pay compensation, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

According to the stipulation of article 5/3, it is notable that the right of the passenger for compensation is affected from the occurrence of extraordinary circumstances and all the reasonable measures taken by the air carrier to avoid those extraordinary circumstances. If the operating air carrier proves that it has taken all necessary measures to avoid the extraordinary circumstances, it is exempted from the obligation to compensate the passenger.

In order to have a correct enforcement of this article, it is necessary to have the clear answers of below questions:

- 1) What is understandable with "extraordinary circumstances"?
- 2) All the extraordinary circumstances confer exemption?
- 3) What is the meaning of reasonable measures in light of this bylaw?

4) When an operating air carrier is deemed to have taken all reasonable measures? Is the time determinant in such judgment?

5) May a technical problem in an aircraft, which leads to the cancellation of a flight, be considered as covered by the concept of 'extraordinary circumstances'?

- Extraordinary circumstances meaning: The Bylaw does not define the "extraordinary circumstances". If we make reference to EC 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, Recital 15 of which stipulates that:

'Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.

In my judgment, it is strongly advisable to apply the abovementioned definition when dealing with "extraordinary circumstances" in case of passengers' right in civil aviation. Notwithstanding the fact that this definition is not been transposed (so it is not part of Albanian law), I strongly believe that this definition is valid also for Albanian law and any elusion from it, will bring wrong interpretation and inaccurate execution of the act. An internal issue of transposition process should not affect and determine the interpretation of this concept.

- Regarding question 2 and 3, at paragraph 40 of Case C-549/07 Wallentin-Hermann [2008] ECR I-11061, the Court held that, since not all extraordinary circumstances confer exemption, the onus is on the party seeking to rely on them to establish, in addition, that they could not on any view have been avoided by measures appropriate to the situation, that is to say, by measures which, at the time those extraordinary circumstances arise, meet, inter alia, conditions which are technically and economically viable for the air carrier concerned. Indeed, that air carrier must, as the Court specified at paragraph 41 of that judgment, establish that, even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal, it would clearly not have been able, unless it had made intolerable sacrifices in the light of the capacities of its undertaking at the relevant time, to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight.

- The occurrence of extraordinary circumstances makes it very difficult, if not impossible, to operate a flight at the scheduled time. Thus, the risk of delay to a flight, which may ultimately result in its cancellation, is usual and foreseeable. Since air carrier is obliged to implement all reasonable measures to avoid extraordinary circumstances, it must reasonably, at the stage of organizing the flight, take account of the risk of delay connected to the possible occurrence of extraordinary circumstances. Therefore, the operating air carrier must organize its resources in good time to provide for some reserve time, so as to be able, if possible, to operate that flight once the extraordinary circumstances have come to an end. If, in such a situation, an air carrier does not, however, have any reserve time, it cannot be concluded that it has taken all reasonable measures as provided for in Article 5(3) of Bylaw.

An air carrier is deemed to have taken the appropriate measures to avoid extraordinary circumstances, if these measures at the time of the occurrence of the extraordinary circumstances, met inter alia, conditions which

were technically and economically viable for that carrier. It is important to stress that the existence of the extraordinary circumstances, should be proved by the operating air carrier.

In order to conclude that an air carrier should be exempt from its liability in case of cancellation of the flight because the conditions stipulated in article 5(3) of the Bylaw are met, it is not necessary to assess a minimum reserve time applicable in the same way to all air carriers in all situations when extraordinary circumstances arise.

- As a rule, according to the Court of Justice, Case C-549/07, paragraph 34, a technical problem in an aircraft which leads to the cancellation of a flight, is not covered by the concept of 'extraordinary circumstances, within the meaning of provision 5(3). As an exception, when a technical problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control, a technical problem is considered covered by the concept of extraordinary circumstances.

1.3 Long delay of flight

Concept of flight delay - Article 6 of the Bylaw stipulates rules regarding long delay of flights. For the purposes of Article 6, a flight is considered to be delayed, if it is operated in accordance with the original planning and its actual departure time is later than the scheduled departure time. The notion of 'flight delay' is considered only by reference to the scheduled departure time and which implies as a consequence that, after the departure time, the other elements pertaining to the flight must remain unchanged.

Should a flight delay be regarded as a flight cancellation for the purposes of Articles 2(1) and 5 of Bylaw where the delay is long?

As is been explained above, a cancellation of a flight, unlike delay, is the result of non-operation of a flight which was previously planned. It follows that, in that regard, cancelled flights and delayed flights are two quite distinct categories of flights. It cannot therefore be inferred from Bylaw that a flight which is delayed may be classified as a 'cancelled flight' merely on the ground that the delay is extended, even substantially.

A flight is delayed, irrespective of the duration of the delay, even if it is long, and it cannot be regarded as cancelled where the flight is operated in accordance with the air carrier's original planning.

1.4 Right to compensation in the event of delay

The bylaw explicitly foresees the right of compensation in case of flight cancellation and by contrast, it does not expressly follow from the wording of it that passengers whose flights are delayed have such a right. But as lawyers are aware, while interpreting a provision, it is not sufficient to consider only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part. The provisions conferring rights on air passengers, including those conferring a right to compensation, must be interpreted broadly, as long as the aim of the Bylaw is to ensure a high level of protection for passengers.

As a conclusion, according to article 6 and 7 of the Bylaw passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled and they may thus rely on the right to compensation laid down in Article 7 of the Bylaw where they suffer, on account of a flight delay, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay was

caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.

References

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3. By law No. 1 date 26.02.2013 “On compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights”
4. By law No 17, date 15.10.2008 “On compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights”
5. 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
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