

30 March 2016

Remarks to the draft of Interpretative Guidelines in the field of air passenger rights

point 6. EXTRAORDINARY CIRCUMSTANCES and 6.2. Technical defects

Remark no 1

The passengers who submitted complaints to the carriers and where technical defects are the reason of cancellation/ long delay, passengers should be provided with full and complete information.

It happens very often, the answer from the airline just reads "technical defect occurred, which is an extraordinary circumstance" and it does not provide the passengers with sufficient explanation.

Moreover, the air carriers refuse to provide passengers with more details on nature / type of technical defects, saying as such information is restricted to entitled bodies, only.

Surely most if not all technical defects are within the control and responsibility of the airline anyway? Why the air transport should be different from other modes of transport? With example of rail carriers, which can only be relieved of some of their liabilities in case of:

- circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent

- behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.

(Source: article 32 § 2 of the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail - CIV)

Remark no 2

There is no reference within the document on industrial actions (labour strikes), which affect air passenger every year.

There is some sort of industrial action e.g. ATC strikes, which is indeed beyond the actual control of that carrier on account of its nature or origin and therefore it comply with the definition of extraordinary circumstances. However, labour strike called by airline employees (pilots and/or crew) is both inherent in the normal exercise of the activity of the air carrier concerned (as company and employer) and stays within full responsibility of the airline. Therefore there is a need for the strikes to be mentioned and explained in the Interpretative Guidelines.

point 8.1. Complaints to National Enforcement Bodies

Remark no 3

The Interpretative Guidelines read that passengers' complaints to a National enforcement body should be made only when they have first complained to the air carrier and disagree with the air carrier's answer. However the reality shows that there are cases in which some airlines do not answer passengers at all or the answer is made after two or more months. In addition to it, some air carrier insist on passengers to provide the complaint in selected languages (which means in reality reject it), saying as they do not have staff to read and understand all languages of EU countries, the airline operates to. Such practices infringe basic consumer rights and deteriorate the situation of the passenger. Therefore, although the current regulation does not stipulate time-frame for the answer to the complaint, the guidelines should refer to thirty day(30) deadline for an airline to answer to air passenger complaint and the passenger has the right to write a complaint in the language, which is official in EU country the air carrier operates to/from.

Remark no 4

Introduce within the Interpretative Guidelines a good practice in the field of communication of results of the assistance provided by NEB to the air passengers. The passengers should be informed (at least yearly) by public announcement by local NEB with some basic statistical data. Primarily:

- number of passenger complaints received by NEB
- average time-scale (in days) of handling the complaints by NEB,
- percentage of administrative decisions by NEB in favour of passengers
- percentage of administration decisions by NEB, which were rejected by the air carrier and passenger had to escalate it to the court.

point 8.2. ADR Entities

Remark no 5

Introduce within the Interpretative Guidelines a good practice in the field of communication of performance of the ADR entities in disputes between air passengers and airlines. The passengers should be informed (at least yearly) within public announcement by ADR entities with some basic statistical data. Primarily:

- number of ADR requests received
- percentage of ADR proceedings, which were resolved
- percentage of ADR proceedings, which were not resolved and the passenger had to escalate it to the court.