



Republika e Kosovës
Republika Kosova-Republic of Kosova
Qeveria - Vlada-Government

Ministria e Transportit dhe Post-Telekomunikacionit
Ministarstvo za Saobraćaj, Poštu i Telekomunikacije
Ministry of Transport and Communications

Pursuant to Article 93.4 of the Constitution of the Republic of Kosovo and Article 6.1 of Law No. 03/L-051 on Civil Aviation,

Having regard to UNMIK's signature of the Multilateral Agreement on the Establishment of a European Common Aviation Area ("the ECAA Agreement") on behalf of Kosovo, and the provisional entry into force of the ECAA Agreement in Kosovo on 10 October 2006,

Whereas the provisions of the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 1999) for all contracts of carriage by air of passengers, baggage and cargo where Kosovo is a point of origin, point of destination or an agreed stopping place, are declared applicable in Kosovo through the Law on Civil Aviation (Law No. 03/L-051) of 13 March 2008,

For the purpose of setting out rules and procedures on air carrier liability in respect of carriage of passengers and their baggage by air in accordance with the ECAA Agreement and its requirement that Regulation (EC) No 2027/97 as amended by Regulation (EC) No 889/2002 shall be made part of the internal legal order of Kosovo,

Issues:

REGULATION No. 2008/4
ON AIR CARRIER LIABILITY IN RESPECT OF THE CARRIAGE OF
PASSENGERS AND THEIR BAGAGGE BY AIR

Article 1

This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air where Kosovo is a point of origin, point of destination or an agreed stopping place, and lays down certain supplementary provisions. It also extends the application of these provisions to carriage by air within Kosovo.

Article 2

Definitions and Interpretation

1. In this Regulation:

“Air carrier” means an air transport undertaking with a valid operating licence;

“ECAA Agreement” means the Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the Establishment of a European Common Aviation Area;

“ECAA air carrier” means an air carrier, which is licensed by an ECAA state as provided for by ECAA Agreement in accordance with the provisions of Regulation (EEC) No 2407/92, specified in Annex I to the ECAA Agreement;

“Person entitled to compensation” means a passenger or any person entitled to claim in respect of that passenger, in accordance with applicable law;

“Baggage”, unless otherwise specified, means both checked and unchecked baggage with the meaning of Article 17(4) of the Montreal Convention;

“SDR” means a Special Drawing Right as defined by the International Monetary Fund;

“Warsaw Convention” means the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague on 28 September 1955 and the Convention supplementary to the Warsaw Convention done at Guadalajara on 18 September 1961;

“Montreal Convention” means the “Convention for the Unification of Certain Rules Relating to International Carriage by Air”, signed at Montreal on 28 May 1999.

“Ministry” means the Ministry of Transport and Communications of the Republic of Kosovo;

“UNMIK” means the United Nations Interim Administration Mission in Kosovo;

“Commission” means the European Commission;

2. Concepts contained in this Regulation which are not defined in Article 2.1 shall be equivalent to those used in the Montreal Convention.

Article 3

1. The liability of an ECAA air carrier in respect of passengers and their baggage where Kosovo is a point of origin, point of destination or an agreed stopping place, shall be governed by all provisions of the Montreal Convention relevant to such liability.

2. The obligation of insurance set out in Article 7 of Regulation (EEC) No 2407/92 as far as it relates to liability for passengers shall be understood as requiring that an ECAA air carrier shall be insured up to a level that is adequate to ensure that all persons entitled to compensation receive the full amount to which they are entitled in accordance with this Regulation.

Article 3a

The supplementary sum which, in accordance with Article 22(2) of the Montreal Convention, may be demanded by an ECAA air carrier when a passenger makes a special declaration of interest in delivery of their baggage at destination, shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above those for baggage valued at or below the liability limit. The tariff shall be made available to passengers on request.

Article 4

DELETED

Article 5

1. The ECAA air carrier shall without delay, and in any event not later than fifteen days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.

2. Without prejudice to Article 5.1, an advance payment shall not be less than the equivalent in euro of 16 000 SDRs per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of ECAA air carrier liability, but is not returnable, except in the cases prescribed in Article 20 of the Montreal Convention or where the person who received the advance payment was not the person entitled to compensation.

Article 6

1. All air carriers shall, when selling carriage by air in Kosovo, ensure that a summary of the main provisions governing liability for passengers and their baggage, including deadlines for filing an action for compensation and the possibility of making a special declaration for baggage, is made available to passengers at all points of sale, including sale by telephone and via the Internet. In order to comply with this information requirement, ECAA air carriers shall use the notice contained in the Annex to this Regulation. Such summary or notice cannot be used as a basis for a claim for compensation, nor to interpret the provisions of this Regulation or the Montreal Convention.

6.2 In addition to the information requirements set out in Article 6.1, all air carriers shall in respect of carriage by air provided or purchased in Kosovo, provide each passenger with a written indication of:

- the applicable limit for that flight on the carrier's liability in respect of death or injury, if such a limit exists,

- the applicable limit for that flight on the carrier's liability in respect of destruction, loss of or damage to baggage and a warning that baggage greater in value than this figure should be brought to the airline's attention at check-in or fully insured by the passenger prior to travel;

- the applicable limit for that flight on the carrier's liability for damage occasioned by delay.

3. In the case of all carriage performed by ECAA air carriers, the limits indicated in accordance with the information requirements of Articles 6.1 and 6.2 shall be those established by this Regulation unless the ECAA air carrier applies higher limits by way of voluntary

undertaking. In the case of all carriage performed by non-ECAA air carriers, Articles 6.1 and 6.2 shall apply only in relation to carriage to, from or within Kosovo.

Article 7

In accordance with Article 7 of Regulation (EC) No 2027/97 as amended by Regulation (EC) No 889/2002 the Commission shall examine the need to revise the amounts mentioned in the relevant Articles of the Montreal Convention in the light of economic developments and the notifications of the ICAO Depositary.

Article 8

This Regulation shall enter into force on 20 November 2008.

Fatmir Limaj
Minister of Transport and Communications

Date: 3 November 2008

ANNEX

Air carrier liability for passengers and their baggage

This information notice summarizes the liability rules applied by ECAA air carriers as required by the ECAA Agreement and the Montreal Convention.

Compensation in the case of death or injury

There are no financial limits to the liability for passenger injury or death. For damages up to 100 000 SDRs (approximately 110 000 euros) the air carrier cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault.

Advance payments

If a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. In the event of death, this advance payment shall not be less than 16 000 SDRs (approximately 17 600 euros).

Passenger delays

In case of passenger delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4 150 SDRs (approximately 4 560 euros).

Baggage delays

In case of baggage delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for baggage delay is limited to 1 000 SDRs (approximately 1 100 euros).

Destruction, loss or damage to baggage

The air carrier is liable for destruction, loss or damage to baggage up to 1 000 SDRs (approximately 1 100 euros). In the case of checked baggage, it is liable even if not at fault, unless the baggage was defective. In the case of unchecked baggage, the carrier is liable only if at fault.

Higher limits for baggage

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee.

Complaints on baggage

If the baggage is damaged, delayed, lost or destroyed, the passenger must write and complain to the air carrier as soon as possible. In the case of damage to checked baggage, the passenger must write and complain within seven days, and in the case of delay within 21 days, in both cases from the date on which the baggage was placed at the passenger's disposal.

Liability of contracting and actual carriers

If the air carrier actually performing the flight is not the same as the contracting air carrier, the passenger has the right to address a complaint or to make a claim for damages against either. If the name or code of an air carrier is indicated on the ticket, that air carrier is the contracting air carrier.

Time limit for action

Any action in court to claim damages must be brought within two years from the date of arrival of the aircraft, or from the date on which the aircraft ought to have arrived.

Basis for the information

The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in Kosovo Law No. 03/L-051 on Civil Aviation and Regulation 2008/4 on Air Carrier Liability in Respect of the Carriage of Passengers and their Baggage by Air.