



## ORIGINAL PAPER

# The Legal Regime of Baggage in Romanian Legislation

Cristina Stanciu<sup>1)</sup>

### Abstract:

The Romanian Civil Code stipulates the obligation of the carrier to carry the passenger's luggage without any other payment and establishes the carrier's liability for non-fulfillment, but does not define the notion of luggage, does not establish a legal regime, at the principle level, for liability of hand luggage and registered one and does not make a clear distinction between the transport of goods and luggage. The general regulation makes references to special laws which also, although regulating the baggage regime in their own means of transport, do not have complete references covering the whole spectrum of legal issues of luggage, which is why, where possible, it leaves the carrier, through their own regulations, to manage these issues.

A broader regulation of luggage rules and, possibly, a definition of it results from special regulations on rail and passenger transport or from special regulations on other types of transport.

**Keywords:** *luggage; hand luggage; checked luggage.*

---

<sup>1)</sup> Associate Professor, PhD, University of Craiova, Law Faculty, Department of Private Law, Romania, Phone: 0040744211959, E-mail: cristina.stanciu1@gmail.com.

## The Legal Regime of Baggage in Romanian Legislation

**General.** The general regulation regarding the contract of carriage is provided in the Civil Code rules, which are grouped into three sections: the provisions of art. 1955- 1960 - Section 1. General provisions, Section 2. The contract of carriage of goods - the provisions of art. 1961-2001 and the provisions of art. 2002-2008 - Section 3. The contract of carriage of passengers and baggage. The first section provides a general rule for all carriage contracts, regardless of the mode of transport and regardless of whether it is the carriage of goods or passengers and baggage. The second section regulates the contract of carriage of goods and, taken as a whole, it resumes the issues of the previous regulation, that of the Commercial Code. Final Section, Section 3. The contract of carriage of passengers and baggage is a set of rules with novelty status at the level of general rule for this matter.

The regulations on the contract of carriage of passengers and baggage do not cover all the legal aspects raised by this type of transport, but it is nevertheless a plus that the current Civil Code provides regulations that establish, even at the level of principles, a minimum set of rules for this matter. However, we must admit that, overall, this regulation contains very few items and that, in fact, in terms of content, only two aspects of the contract of carriage of passengers and baggage are covered: obligations of the parties and the responsibility of the transport operator for the passenger and for the baggage and other goods (Cotuțiu, 2015: 203).

Regarding the baggage, an inventory of the Civil Code regulations with direct addressability for this legal issue, indicates the fact that, from the entire regulation, the following articles are reserved for the issues regarding the baggage: art. 2003 (c), art. 2005, art. 2006 para. 2, art. 2008.

**Baggage in the General Regulation.** The Romanian Civil Code provides in art. 2003 (c), the obligation of the carrier to transport, without additional costs, the passenger's baggage, in the quantity and terms stipulated by the provisions of the special law. Although the Civil Code regulates baggage as a general rule, it does not define the notion of baggage, nor does it make a clear distinction between what is carry-on baggage and checked baggage, referring to special laws.

As the doctrine notes, the definition of the notion of baggage is important because in the case of damages to other goods than those included in the baggage, the liability of the carrier will be based on the provisions of art. 1984 and the following in the matter of the contract of carriage of goods and not on art. 2005 regulating the liability for the travellers' baggage and their other goods (Baias, Chelaru, Constantinovici, Macovei, 2012: 2011).

The doctrine (Popa, 2020: 678-679) is also the one that tries to define the content of the notion of baggage. Thus, baggage consists of those goods intended to be used by the traveller, intended for the purpose of the journey or necessary to the traveller at the destination (Nemeș, Fierbințeanu, 2020: 310-311). In other words, baggage is a set of goods that serve the travellers as necessary and usual goods in their journey or when they reach their destination. It is of two types: carry-on baggage, which is carried with the passengers, therefore, in the same vehicle, being at their disposal and under their supervision the whole journey and the checked baggage, which is handed over to the carrier and which is transported separately from the passenger and under the supervision of the carrier. Regardless of the type of baggage, there are conditions related to its content, quantity or volume, depending on the type of transport. Thus, these goods are

usually contained in suitcases, trunks, travel bags, bags, baskets and the like, and the notion of baggage includes for different types of transport and objects such as: portable armchairs or wheels for sick people, prams, skis, certain musical instruments, various devices needed by the passenger, etc.

The carrier is liable for the loss or damage to the passenger's baggage or other goods, unless it is proved that the damage was caused by their vice, the passenger's fault or by force majeure.

It can be seen that art. 2005 of the Civil Code regulates the loss and damage, but not the delay of baggage. This does not mean that in case of delay the carrier is not liable, but that the liability for the delay of the baggage will be based on the provisions of art. 1959 para. 2 of the Civil Code stipulating that: for the damages caused by the delay in reaching the destination, except for the fortuitous case and the force majeure, the carrier is liable. Also, the provisions of art. 2004 para. 2 of the Romanian Civil Code apply, which stipulates that the carrier is liable for direct and immediate damages resulting from the non-execution of the transport, from its execution in other conditions than those established or from the delay of its execution.

For carry-on baggage or other goods carried by the passenger, the carrier will be liable only if the carrier's intent or fault for the loss or damage of such baggage is proved.

The obligation to carry the passenger's baggage is an obligation of result, as a rule, and an obligation of means, as an exception, if the transport is free (Stănescu, 2019: 27), and the legal responsibility for the baggage and other goods of the passenger is, as a legal nature, a contractual liability (Baiaș, Chelaru, Constantinovici, Macovei, 2012: 2012).

For the carrier to be held liable, the conditions for this type of liability must be met cumulatively: the existence of damage – quantified in the loss or damage of baggage or other goods of the passenger, the existence of an unlawful act – actions or, where appropriate, inactions of the carrier or the defective compliance with an obligation to preserve the baggage, the culpable commission of this deed, a causal relationship between the illicit deed and the damage. According to the rules of civil law, namely the provisions of art. 1548 of the Romanian Civil Code, the fault of the debtor of a contractual obligation is presumed by the mere fact of its non-execution. As a result, for the loss or damage of the baggage or other goods of the passenger, the carrier's guilt, as a rule, does not have to be proved. As an exception, guilt must be proved in the case of carry-on baggage or other goods which the passenger carries with him/her and which are, mainly, under his/her supervision.

Also, in order for the carrier to be held liable, causes extenuating liability or forfeiture of the right to be compensated should not apply in that particular case. These causes are listed by art. 2005 para. 1 of the Civil Code, namely the baggage vice, passenger fault or force majeure. The provisions of art. 1991 para. 3 of the Romanian Civil Code add up to these. The application of this provision is possible, because it is expressly referred to by legal provisions on the contract of carriage of passengers and baggage, namely the provisions of art. Civil Code aimed at removing the carrier's liability in this matter. The effect is that extending the exonerating causes of liability provided by art. 2005 of the Romanian Civil Code. Thus, it will not be liable even in cases where the damage is caused by the passenger's instructions or by the act of a third party for which the carrier is not held liable.

Regarding the amount of damages, the carrier is liable for the loss or damage of

## The Legal Regime of Baggage in Romanian Legislation

the passenger's baggage or other goods within the declared value or, if the value has not been declared, in relation to the nature, their usual content.

The Civil Code regulates in the matter of the contract of carriage of passengers and baggage, in art. 2006, the liability in successive or combined transport. Thus, in the successive or combined transport, the carrier on the transport of which the death occurred, the injury of the bodily integrity or the health of the passenger, the loss or damage of the passenger's baggage or other goods is responsible for the damage thus caused. We observe the promotion at the legislative level of a different solution to the transport of goods where, regarding the liability of this type of transport, the responsible action can be exercised against the carrier who has concluded the contract of transport or against the last carrier and in respect of damages, In their relations, each carrier contributes to compensation in proportion to the appropriate portion of the fare. An exception is also allowed in this matter: the carrier is not liable if the transport contract expressly stipulates that one of the carriers is fully responsible.

For the loss or damage of baggage or other goods of the traveller that have been delivered, each of the carriers is required to contribute to compensation. Regarding the baggage, the Code refers to the provisions of art. 2000 of the Civil Code that becomes applicable in the matter, that is to say the solution in the matter of the contract of carriage of goods. However, it should be noted that the solution is valid, according to the Civil Code, for the loss or damage of baggage or other goods of the passenger that have been handed over to the carrier. On the contrary, this solution does not apply to baggage and goods held by the traveller, but to the transport of persons.

At the same time, it should be noted that the exceptions to the rule that each carrier contributes in proportion to its share in the cost of transport to compensation will be maintained, exceptions promoted by the legal provisions on the carriage of goods, namely: if the damage is caused intentionally or through the gross negligence of one of the carriers, in which case the entire compensation is incumbent on it and if one of the carriers proves that the damage did not occur during its carriage, in which case it will no longer be bound to contribute to compensation (Baiaş, Chelaru, Constantinovici, Macovei, 2012: 2013).

Thus, the Romanian Civil Code, although it stipulates the obligation of the carrier to carry the baggage of the passenger without further payment and establishes the carrier's liability for non-compliance with this provision, it does not define the concept of baggage, it does not establish a legal regime at the principle level for liability in respect of carry-on baggage and the checked one and does not make a clear distinction between what constitutes the transport of goods and that of baggage. It limits itself to making references to the special laws which, although they regulate the baggage regime in their own means of transport, they do not have complete references covering the whole spectrum of legal issues raised by baggage, which is why, where possible, it leaves it to the carrier, by its own regulations, to manage these aspects.

**Baggage in Railway Transport.** A broader regulation of the baggage rules and, possibly, a definition thereof results from the special regulations regarding the railway transport of passengers and baggage.

The legal rules that regulate the transport of passengers on the Romanian railways are: Government Ordinance No 7/2005 for the approval of the Regulation on railway transport in Romania, as amended by Order No 655/2007 for the approval of the Uniform Rules on the Railway Transport in Romania. However, the regulation focuses

mainly on the passenger's carry-on baggage and less on the legal status of checked baggage.

According to art. 17 of the Government Ordinance No 7/2005, the traveller can take with him/her in the passenger cars the carry-on baggage, free of charge. Carry-on baggage should, as a rule, be easy to handle, be well packaged, so that it is not possible to leak the contents, damage or mess the wagons or cause inconvenience to the other passengers. The passenger has, for his/her carry-on baggage, only the space above the seat he/she occupies or an equivalent space in the baggage storage of the wagons. For railway transport, the total weight of carry-on baggage allowed for each occupied place is 30 kg. There are also prohibitions, in the sense that the following cannot be introduced as baggage: materials and objects excluded from the carriage of baggage, objects likely to embarrass or disturb passengers or cause damage to passengers, the railway operator or to the railway infrastructure, objects prohibited by the regulations of the administrative authorities, certain living beings. As a rule, animals, birds, reptiles, fish, live insects cannot be carried in passenger wagons (Law No 110/2006, art. 18). The supervision of the objects that the traveller takes with him/her in the wagon rests with them and, in principle, the traveller is responsible for any damage caused by the objects and living beings he/she takes along in the wagon. The carrier remains liable if it is found that the baggage has been lost out of its fault.

The legal basis of liability is provided by art. 22 of Government Ordinance No 7/2005 which stipulates that the railway carrier is liable for damage resulting from the death, injury or any other damage to the physical or mental integrity of the passenger, caused by an accident, in connection with the railway operation, produced while the passenger is in vehicles or in spaces related to the operator, respectively in the embarkation and disembarkation operations. At the same time, it is also liable for the damage resulting from the total or partial loss or damage to the objects that the passenger, victim of such an accident, had on him/her.

The carrier has the right to ensure, in the presence of the passenger, the nature of the objects introduced in the passenger cars or in its spaces. If it is not possible to identify the holder of the objects subject to verification, the carrier shall carry out the verification in the presence of law enforcement.

The rules regarding the baggage forgotten in the train are, as a rule, included in the regulations of the railway transport operator, which are brought to the passengers' knowledge and, in this sense, Order No 655/2007 stipulates that the baggage that was forgotten on the train and that was found by the agents of the public railway passenger transport operators, will be deposited at the home station, namely the final train station.

For international rail transport, the applicable rules are those of the Convention concerning International Carriage by Rail of May 9<sup>th</sup>, 1980 (COTIF) to which Romania is a party, as a Member State of the European Union. With regard to the baggage, a comprehensive treatment of carry-on baggage and checked baggage and their legal status is provided by the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail - CIV Appendix A to the Convention. Thus, according to Title III (Chapter I, II and III) and Title IV (Chapter III), a series of rules on baggage are established and the conditions are established for which the responsibility incumbent is incurred in case of non-compliance.

With regard to carry-on baggage, which is defined as easy-to-carry items, a set of rules is established. Thus, objects or animals which may disturb or cause inconvenience to other passengers or which may cause damage are not permitted as

## The Legal Regime of Baggage in Romanian Legislation

carry-on baggage; the transport of dangerous goods, as carry-on baggage, can be transported by rail only under the terms of the International Carriage of Dangerous Goods by Rail (RID); during the journey, the passenger is bound to comply with all formalities required by the customs or administrative authorities in terms of carry-on baggage or animals. To this end, the passenger will have to be present at the verification of these objects or animals, except in the situations provided for as exceptions by the laws of the State in transit at that time.

With regard to the duty of care, the carry-on baggage and animals carried by the passenger must be supervised by him/her.

In the event of a presumption of non-compliance with the conditions of carriage, the carrier has the right to verify that the carry-on baggage and the animals transported comply with the transport conditions. The passenger must be invited to attend the verification, and in his/her absence, the carrier must carry out the verification in the presence of two independent witnesses. If, as a result of the checks, it is found that the passenger has not complied with the conditions of carriage, the carrier may ask him/her to pay the costs of the check.

With regard to liability, in the event of death or personal injury of passengers, the carrier shall be liable for damage resulting from the total or partial loss or damage to objects the passenger had on him/her and for his/her carry-on baggage. The carrier shall also be liable if the damage was caused by an accident in connection with the operation of the railway, which occurred while the passenger was in the railway vehicles or in the embarkation or disembarkation operations, except in those situations where the carrier is exempt from liability (Uniform Rules concerning the Contract for the International Carriage of Goods by Rail - CIV Appendix A to the Convention, art. 26 para. 2). The carrier is not liable for damage resulting from the total or partial loss or damage to objects, carry-on baggage or animals the supervision of which was the responsibility of the passenger, unless the damage is caused by the carrier's fault.

With regard to the checked baggage, the passenger may send, as checked baggage, objects and animals, as long as they do not contravene the general conditions of carriage, and the transport of dangerous goods, as checked baggage, may be transported by rail only under the terms of the International Carriage of Dangerous Goods by Rail (RID).

In the event of a serious presumption of non-compliance with the conditions of carriage, the carrier has the right to verify that the checked baggage and the animals transported comply with the transport conditions. The passenger must be invited to attend the verification, and in his/her absence, the carrier must carry out the verification in the presence of two independent witnesses. If, as a result of the checks, it is found that the passenger has not complied with the conditions of carriage, the carrier may ask him/her to pay the costs of the check.

The contractual obligations on the shipment of checked baggage are stipulated in a baggage registration voucher, a document issued to the passenger by the carrier. This document is required as an *ad probationem* condition, therefore the absence, irregularity or loss of the baggage registration voucher does not affect the existence or validity of the agreements regarding the shipment of checked baggage. The baggage registration voucher shall prove, until proven otherwise, the registration of the baggage and the conditions for the carriage thereof. In other words, the relative presumption arises that the carrier has taken the checked baggage in good condition and that the number and weight of the baggage correspond to the existing entries on the baggage

registration voucher.

The following information shall be recorded on the baggage registration voucher: the carrier or carriers; the mention that the shipment is subject to this Convention, notwithstanding any clause to the contrary, and this may be done under the CIV logo; any other indication necessary to demonstrate the contractual obligations regarding the dispatch of the checked baggage and which allows the passenger to exercise his/her rights deriving from the contract of carriage. The passenger's obligation is to ensure, upon receipt of the registered baggage voucher, that it has been drawn up in accordance with his/her instructions. At the same time, the passenger must write on each package, in a visible, durable and legible place: his/her name, address and destination of the baggage.

As a rule, baggage check-in only takes place upon presentation of a transport pass valid at least until the place of destination of the baggage, but the carrier may send the checked baggage by another train or other means of transport and on a different route than the one used by the traveller.

Unless otherwise stipulated between the passenger and the carrier, the price for the carriage of checked baggage shall be paid at the time of check-in.

The passenger may request the return of baggage at the place of dispatch, against submission of the registered baggage voucher and the transport pass, when possible. The place of destination for the checked baggage may be changed, with possible financial consequences for the passenger.

Delivery of checked baggage will be ensured in exchange for the delivery of the registered baggage voucher or in exchange for payment of the charges for the shipment if they have not been paid in advance. At the same time, the carrier has the right to check if the holder of the voucher has the capacity to take over the delivery. It is, however, a right and not an obligation he/she has to comply with.

The holder of the registered baggage voucher may request the delivery of the baggage to the place of destination as soon as the agreed time or the time required for the operations carried out by the customs or other administrative authorities expires, if a check by them is required.

The baggage is delivered to the place of destination for which it was checked in. The person entitled to receive the baggage may refuse to accept it, if the carrier does not comply with his request to proceed with the checked baggage in order to ascertain a possible damage (Uniform Rules concerning the Contract of International Carriage of Passengers by Rail - CIV Appendix A to the Convention, articles 12-22).

With regard to the liability of the carrier (Uniform Rules concerning the Contract of International Carriage of Passengers by Rail - CIV Appendix A to the Convention, art. 38), it shall be liable for damage resulting from total or partial loss or damage to checked baggage, if any, in the time span between takeover by the carrier and delivery. The carrier is also responsible for the delay in the delivery of baggage.

The carrier is exempt from liability if the loss, damage or delay in delivery was due to: the fault of the passenger, an order given by the passenger not resulting from the carrier's fault, a defect in baggage or circumstances that the carrier could not avoid or prevent. In principle, the burden of proving that the loss, damage or delay in delivery of the checked baggage was due to one of the causes invoked is the carrier's responsibility.

At the same time, the carrier is exonerated from liability if the loss or damage is the result of specific risks inherent in one or more of the following circumstances: lack of packaging or improper packaging; the special nature of the baggage and the dispatch

## The Legal Regime of Baggage in Romanian Legislation

as baggage of items excluded from transport.

If a package has not been delivered or made available to the person entitled to receive it within fourteen days of the request for delivery, the presumption of loss of that package arises.

If a package considered lost is found during the year following the request for delivery, the carrier must notify the person entitled if their address is known or it can be found. Within thirty days of receiving the notice of finding the baggage, the person entitled may request that the package be delivered to them. The consequences are, in this case, the following: they shall pay the costs of transporting the package from the place of dispatch to the place where the delivery will take place and reimburse the compensation received, less, if applicable, the costs included therein. The person entitled to receive the baggage also retains the right to claim compensation for the delay in delivery.

For total or partial loss of the checked baggage, the carrier must pay damages. The carrier must also reimburse the price for the carriage of baggage and other amounts paid in connection with the carriage of the lost parcel, as well as the customs duties and excise duties already paid.

In the event of damage to the checked baggage, the carrier must pay, excluding all the other damages, compensation equivalent to the depreciation of the baggage. In this case, the compensation may not exceed the amount that would have been reached in the event of total loss, if all baggage is impaired due to damage or the amount that would have been reached in case of loss of the impaired part, if only a part of the baggage was impaired due to damage.

In case of delay in delivery of checked baggage, the carrier must pay compensation, for each full period of twenty-four hours from the request for delivery, which does not exceed a maximum of fourteen days according to the General Conditions of Carriage (Uniform Rules concerning the Contract of International Carriage of Passengers by Rail - CIV Appendix A to the Convention, articles 40-43). "General Conditions of Carriage" means the conditions of the carrier in the form of general conditions or legal charges in force in each Member State which have become an integral part of the contract of carriage upon its execution.

**Baggage in Air Transport.** Article 17 of the Montreal Convention, without defining the concept of baggage, stipulates that the term baggage used in the Convention refers to both checked and unchecked baggage, unless there are express provisions relating to a particular type of baggage. Moreover, the provisions of the Convention expressly specify those situations concerning the checked baggage.

One such example is art. 3 of the Montreal Convention which compels the carrier to issue to the passenger a baggage identification tag for each piece of checked baggage. Furthermore, the passenger, by virtue of the right to information, shall be issued a written notice informing them that the carrier may limit their liability in case of destruction, loss or damage of baggage.

The carrier is also liable for damage caused by the destruction, loss or damage of checked baggage, provided that the event that caused the destruction, loss or damage occurred on board the aircraft or during the period when the carrier was entrusted with the checked baggage. The carrier is not liable if the damage that occurred due to a defect in the baggage, its quality or faults.

For unchecked baggage, including the passenger's personal belongings, the air



carrier is only liable if the damage is due to its fault, that of its agents or proxies.

If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage (the Montreal Convention, art. 17).

In the case of air transport, the liability of the baggage carrier in case of destruction, loss, damage or delay is limited (to the amount of SDR 1.000, Special Drawing Rights as defined by the International Monetary Fund, for each passenger), unless the passenger, when the checked baggage was handed over to the carrier, made a special declaration of interest in the delivery to the destination and paid an additional amount, if necessary. The carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination. The carrier shall not be liable in the event that it is proved that the damage was due to an action or omission of the carrier, its agents or proxies, made with the intention of causing damage or by recklessness. These acts or omissions of a servant or agent are relevant only if such servant or agent was acting within the scope of its employment (the Montreal Convention, art. 22).

The air carrier is liable for the delay in the air transport of passengers and baggage. The carrier shall not be liable for any damage caused by the delay if it proves that it has taken all reasonable steps, or its agents or assignees have done so to avoid the damage or that it has been impossible for them to take such actions. Also, if the carrier proves that the damage was caused or facilitated by the negligence or other wrongful act or omission of the person claiming compensation or of the person from whom it derives its rights, the carrier is exonerated in whole or in part from liability to the claimant, if such negligence or any other wrongful act or omission has caused or contributed to the damage.

The Montreal Convention provides that the right to compensation and the limitation of the carrier's liability in the event of destruction, loss, damage or delay of baggage also apply to a passenger claiming such compensation for damage, loss, damage or delay of baggage checked to the name of another passenger, provided that the baggage actually contains the personal belongings of the first passenger. The passenger must, however, prove that their personal belongings were indeed in the checked baggage. It is up to each affected passenger to prove this before a national judge, who may take into account that the passengers are, for example, members of the same family have bought a ticket together and travelled together. The resulting damage and its extent resulting from the loss of baggage include both pecuniary damage and non-pecuniary damage.

Loss of baggage, as well as delayed return of baggage, can cause passengers who owned it a mental illness because they were deprived of their belongings and as claimants, they can claim material damage, but also moral damage. It is well known that, in the field of contractual liability, non-pecuniary damage is lower than in the field of tortious liability and they cover only certain contractual obligations. Baggage, due to the content of its notion, is subject to an obligation whose non-compliance leads to the claim of moral damages as well, not only to material damages. The judge is the one who, in relation to the factual circumstance, will assess the overall amount to compensate for the consequences of the faulty execution of this obligation (Pap, 2016: 197- 203).

The Convention Regulation (the Montreal Convention, art. 1) clarifies the situation of the successive air carriage, in the sense that such a carriage to be performed

## The Legal Regime of Baggage in Romanian Legislation

by several successive carriers is deemed to be one undivided carriage if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of several contracts. As a result, the will of the parties to consider the carriage operation as undivided and not the number of contracts, respectively carriage documents that incorporate this will, prevails.

With regard to the baggage in successive air transport, the passenger may act against the first carrier, against the last carrier and, in addition, they may act against the carrier that actually carried out the transport during which the destruction, loss, damage or delay occurred. These carriers are jointly and severally liable to the passenger (Montreal Convention, art. 36).

**Baggage in Road Transport.** Government Ordinance No 27/2011 on road transport, which is the general framework for the organization and performance of road transport of goods and passengers on the Romanian territory, as well as their related activities and which creates the general legal framework for the direct application of the provisions in this field at European Union level (EC Regulation No 1071/2009 of the European Parliament and of the Council of October 21<sup>st</sup>, 2009, EC Regulation No 1072/2009 of the European Parliament and of the Council of October 21<sup>st</sup>, 2009, EC Regulation No 1073/2009 of the European Parliament and of October 21<sup>st</sup>, 2009), does not provide for a regulation outlining a complete legal regime for baggage on this type of transport.

Government Ordinance No 27/2011 is limited, by its regulations, to provide the obligation of the passenger to pay in advance the fare for the transport. The travel ticket or, as the case may be, the season ticket, represents the contract of carriage in the case of regular services, concluded between the provider – namely the transport operator and the beneficiary – and the passenger, respectively, whereby the road transport operator undertakes to safety and comfortably conduct the transport, and the beneficiary undertakes to pay in advance its value, which includes the insurance of passengers and baggage, as well as the risks that may arise from road transport (Scarlat, 2018: 122-123). In other words, the road carrier is bound to conclude an insurance policy to cover the risks of accidents for the transported passengers and for their baggage.

According to Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, passengers shall be entitled to compensation for death or personal injury as well as to loss of or damage to baggage due to accidents arising out of the use of the bus or coach.

The amount of compensation shall be calculated in accordance with applicable national law. Any maximum limit provided by national law to the compensation for death and personal injury or loss of or damage to baggage shall on each distinct occasion not be less than: EUR 220,000 EUR per passenger and EUR 1,200 per piece of baggage. In the event of damage to wheelchairs, other mobility equipment or assistive devices the amount of compensation shall be equal to the cost of replacement or repair of the equipment lost or damaged (EU Regulation No 181/2011, art. 7).

In the legislation in the field of road transport, covering other transport categories than those covered by Government Ordinance No 27/2011, there are also, for different types of means of transport, references to baggage. Thus, Law No 38/2003 regarding the transport in taxi and rental regime, art. 52 paragraph 3 (m) stipulates the obligation for the carrier to carry the baggage of the clients, in the case of the transport

of persons, within the space meant for them, without collecting additional fees; and art. 49 paragraph 1 (c) that the price of the transport is not conditioned by the number of persons or the quantity of goods transported, as long as they do not exceed the authorized transport capacity of the taxi.

At the same time, Emergency Government Ordinance No 49/2019 on alternative transport activities with a car and a driver, provides the obligation of the carrier to carry the baggage of the passenger without further payment. Regarding the baggage, art. 28 of this regulation expressly stipulates that, in the exercise of his/her job, the driver has the obligation to transport customers' baggage, in the case of passenger transport, within the limits of the space intended for this purpose, without charging additional fees. This regulation represents an application of the principles established, in the matter of baggage, in the general theory, through the provisions of art. 2003 of the Civil Code on the obligations of the parties in the contract of carriage of passengers and baggage.

**Baggage in Maritime Transport.** The regulation of maritime transport in our legislation is also not very rich in terms of providing a legal baggage regime. In Romanian law, the navigation activity is regulated by Government Ordinance No 42/1997 on naval transport, as republished. After the entry into force of Government Ordinance No 42/1997 on civil navigation, the legal regulations in the field have been supplemented with legal provisions aimed at ensuring optimal conditions for naval transport activities. These normative acts include more technical provisions and legal provisions covering the organization of a global system of authorization and licensing and the establishment of personnel, or facilities intended to promote international maritime transports. In the absence of special regulations in this area, common law will be used.

In this sense, art. 2618 of the Civil Code provides that the property that is part of a passenger's personal belongings is subject to their national law. The regulation, which belongs to the sphere of private international law, is a more comprehensive one and it concerns goods in transit, in general, for which the following rule operates: they are subject to the law of the state from which they were sent (Romanian Civil Code, art. 2618). There are, however, three exceptions to the law of the place of dispatch of the goods: when the interested parties have chosen by their agreement, another law, it thus becomes applicable; when the goods are stored in a warehouse or seized under precautionary measures or as a result of a forced sale, in which case the law of the place where it was temporarily resettled shall apply during the period of storage or seizure; if the goods are part of a passenger's personal belongings, they are, in this situation, subject to his/her national law.

Council Decision of December 12<sup>th</sup>, 2011 concerning the accession of the European Union to the Protocol of 2002 to the 1974 Athens Convention relating to the Carriage of Passengers and their Baggage by Sea it is an improvement in the European Union in terms of the liability of carriers and the compensation of passengers travelling by sea. In particular, this Protocol provides for a liability of the carrier, including compulsory insurance, with a right of direct action against insurers up to specified limits, and for rules on jurisdiction and the recognition and enforcement of judgments. In other words, the Athens Protocol is therefore in accordance with the Union's objective of improving the legal regime relating to carriers' liability.

Most of the rules of the Athens Protocol have been incorporated into Union law by means of Regulation (EC) No 392/2009 of the European Parliament and of the

## The Legal Regime of Baggage in Romanian Legislation

Council of April 23<sup>rd</sup>, 2009 on the liability of carriers of passengers by sea in the event of accidents. Regulation (EC) No 392/2009 reproduces in its annexes the relevant provisions of the consolidated version of the Athens Convention as amended by the Athens Protocol and the IMO Guidelines.

Romania, by Law 34/2014, acceded to the Protocol of 2002 to the Athens Convention of 1974 on the Carriage of Passengers and their Baggage by Sea, adopted in London on November 1<sup>st</sup>, 2002.

The protocol defines a series of notions concerning the contract of carriage of persons and baggage for this type of transport. Thus, under that regulation, *passenger* means any person carried on board a ship under a contract of carriage or who, with the consent of the carrier, accompanies a vehicle or live animals. *Baggage* is, according to the same regulations, any object or vehicle carried by the carrier under a contract of carriage, except for: objects and vehicles carried under a charter party, a bill of lading or other contract mainly covering the carriage of goods and live animals. *Cabin baggage* is the baggage that the passenger has in his/her cabin or that is otherwise in his/her possession, custody or under his/her control. Cabin baggage also includes baggage that the passenger has inside or above his/her vehicle.

At the same time, the notion of *loss or damage to baggage* includes the material damage resulting from non-delivery of baggage to the passenger within a reasonable time of arrival of the ship on which it was shipped or was due to be shipped, less delays caused by labour disputes.

According to the Athens Protocol, for the loss suffered as a result of the loss of or damage to cabin baggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident. The shipping incident is represented by the shipwreck, overturning, collision or failure of the ship, explosions or fires on board or failure of the ship, and the fault or negligence of the carrier is also caused by the fault or negligence of its agents acting in their duties.

For the loss suffered as a result of the loss of or damage to baggage other than cabin baggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

The liability of the carrier relates exclusively to damage caused by incidents during transport and proving that fact and the extent of the damage lies with the plaintiff.

### References:

- Baias, Fl.A., Chelaru, E., Constantinovici, R., Macovei, I. (coordinators), (2012), *Noul Cod civil, Comentariu pe articole*, art. 1-2664, Bucharest: C.H. Beck Publisher
- Cotuțiu, A., (2015), *Contractul de transport*, Bucharest: C.H. Beck Publisher
- Nemeș, V., Fierbințeanu, G., (2020) *Dreptul contractelor civile și comerciale. Teorie, jurisprudență, modele*, Bucharest: Hamangiu Publisher
- Pap, A., (2015), *Transportul aerian și drepturile pasagerilor în legislația Uniunii Europene. Sinteze de jurisprudență*, Bucharest: Universul Juridic Publisher
- Popa, I., (2020) *Contracte civile de la teorie la practică, Ediția a II-a revizuită și adăugită*, Bucharest: Universul Juridic Publisher
- Scarlat, D.I., (2018), *Impactul clauzelor abuzive în contractul de asigurare*, Revista de Științe Juridice, 1, 122-123
- Stănescu, A.T., (2019), *Dreptul transporturilor. Contracte specifice activității de transport*, 4<sup>rd</sup> Edition, Bucharest: Hamangiu Publisher

- Codul civil român, art. 2002-2008  
O.G. nr. 29/1997 privind Codul aerian  
O. G. nr. 7/2005 pentru aprobarea Regulamentului de transport pe căile ferate din România  
O.G. nr. 27/2011 privind transporturile rutiere  
Convenției din 9 mai 1980 cu privire la transporturile internaționale feroviare (COTIF)  
Convenția pentru unificarea anumitor reguli referitoare la transportul aerian internațional, adoptată la Montreal la 28 mai 1999  
Convenția de la Atena din 1974 privind transportul pe mare al pasagerilor și al bagajelor lor, adoptat la Londra la 1 noiembrie 2002  
Protocolul din 2002 la Convenția de la Atena din 1974 privind transportul pe mare al pasagerilor și al bagajelor lor, adoptat la Londra la 1 noiembrie 2002  
Regulamentul nr. 261/2004 al Parlamentului European și al Consiliului din 11 februarie 2004 de stabilire a unor norme comune în materie de compensare și asistență a pasagerilor în eventualitatea refuzului la îmbarcare sau anulării ori întârzierii prelungite a zborurilor  
Orientările interpretative referitoare la Regulamentul CE nr. 261/2004 al Parlamentului European și al Consiliului de stabilire a unor norme comune în materie de compensare și de asistență a pasagerilor în eventualitatea refuzului la îmbarcare și anulării sau întârzierii prelungite a zborurilor și la Regulamentul CE nr. 2027/97 al Consiliului privind răspunderea operatorilor de transport aerian în caz de accidente, astfel cum a fost modificat prin Regulamentul CE nr. 889/2002 al Parlamentului European și al Consiliului  
Regulile uniforme privind Contractul de Transport Internațional Feroviar de Călători (CIV Apendice A la Convenție).

---

**Article Info**

*Received:* March 31 2021

*Accepted:* May 05 2021

---