



ORIGINAL PAPER

The Legal Regime of the Railway Passenger Carrier in the Romanian Legislation

Cristina Stanciu¹⁾

Abstract:

Rail and passenger transport is a segment of transport that benefits, in our legal system, from a regulation that covers a very wide range of legal issues. It is an exhaustive regulation, which represents a benchmark for other transport segments that have not been reserved a treatment at such a wide legislative level. In many cases, the regulation of the railway area, of transport of goods or people, brings clarifications or explains a series of notions and concepts used in other types of transport which, although they use them, do not define them.

In Romania, public railway transport is a strategic sector of national interest and an essential public service for society.

Rail passenger transport has, according to the law, the character of public passenger transport. The Ministry of Transport and other competent authorities shall act in the field of public passenger transport by rail to ensure the provision of services of general interest and shall conclude public service contracts with railway undertakings thereby establishing public service obligations of national interest in order to provide adequate transport services.

Public railway transports are performed only on the basis of a transport contract, and the transport contract is concluded and executed under the conditions of the regulations of the Romanian Civil Code, of the Regulation on Romanian railway transport, respectively the provisions of Government Ordinance no. 7/2005 and of the international agreements and conventions to which Romania has acceded.

Keywords: *public railway transports, rail passenger transport.*

¹⁾ Associate Professor, PhD, University of Craiova, Law Faculty, Department of Private Law, Romania, Phone: 0040744211959, Email: cristina.stanciu1@gmail.com.

The Legal Regime of the Railway Passenger Carrier in the Romanian Legislation

Regulations governing the contract for the carriage of passengers and luggage by rail. The carriage of passengers and luggage by rail is a segment of transport which is regulated in our legal system, covering a very wide range of legal issues. It is an exhaustive regulation, which is also a benchmark for other transport segments that have not been treated as comprehensively in law.

The main legislation governing passenger carriage by rail are: Emergency Ordinance No 12 of 7 July 1998, Ordinance No 7 of 2005; Law No 55 of 2006, Convention concerning International Carriage by Rail (COTIF) of 9 May 1980.

Emergency Ordinance No 12 of 7 July 1998 on transport on the Romanian railways and reorganisation of the Romanian National Railway Company covers general aspects concerning the organisation and performance of transport on the Romanian railways, identification of the competent State authority in the field of transport by rail and its powers, legal aspects concerning the railway infrastructure, ensuring its operation and the safety of traffic on the Romanian railways, reorganisation of the Romanian National Railway Company. This Ordinance was republished pursuant to Article II of Government Emergency Ordinance No 125/2003 supplementing Government Emergency Ordinance No 12/1998 on transport on the Romanian railways and reorganisation of the Romanian National Railway Company and was approved with amendments and additions by Law No 128/2004.

Ordinance No 7 of 2005 approving the Romanian Regulation on Carriage by Rail was republished pursuant to Article II of Law No 110/2006 approving Government Ordinance No 7/2005 for the approval of the Romanian Regulation on Carriage by Rail. The regulation applies to the forwarding, public transport of passengers, goods and other goods on Romanian railways. In addition to the provisions of the Romanian Regulation on Carriage by Rail, the Ministry of Transport has issued Uniform Rules, applicable to railway infrastructure director and managers, carriers and beneficiaries of railway carriage. The Romanian Regulation on Carriage by Rail regulates the rights, obligations and responsibilities of the railway infrastructure director and managers, railway carriers and beneficiaries of transport on Romanian railways. In turn, each railway carrier may issue its own regulations, but only in accordance with and in compliance with the Romanian Regulation on Carriage by Rail and the Uniform Rules.

Law No 55 of 2006 on railway safety ensures, through a set of legal rules, the development and improvement of safety on Romanian railways and improved access to the market for rail transport services, by: harmonising national legislation with that of the European Union, defining the responsibilities of all participants in rail traffic, setting up a railway safety authority in Romania and a body for investigating railway accidents and incidents. The law applies to the entire railway system in Romania, covering all safety requirements for the whole system, including the safe management of infrastructure and rail traffic and the interaction between rail carriers and infrastructure directors.

On Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, the signatory parties to the Convention have constituted themselves, as Member States, in the Intergovernmental Organisation for International Carriage by Rail (OTIF), based in Berne. The aim of this Organisation is to create a uniform legal regime applicable to the transport of passengers, luggage and goods in direct international traffic between Member States using railway lines. Transport in direct international traffic is supplemented by the "Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV)", which form Appendix A to the Convention.

Legal characteristics of the contract of carriage of passengers by rail. In Romania, public rail transport is a strategic sector of national interest and an essential public service for society. Rail passenger transport is, by law, public passenger transport. The Ministry of Transport, Infrastructure and Communications and other competent authorities act in the field of public passenger rail transport to ensure the provision of services of general interest and, to this end, conclude public service contracts with rail transport operators, under which public service obligations of national interest are established in order to provide adequate transport services according to Law No. 205 of 8 November 2019 for the approval of Government Emergency Ordinance No. 83/2016 on some measures to streamline the implementation of transport infrastructure projects, some measures in the field of transport.

The public service contract (Regulation EC No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations EEC No 1191/69 and EEC No 1107/70, Article 2(i)) is a legally binding act containing an agreement between a competent authority and a public service operator to entrust the management and operation of public passenger transport services to that public service operator, subject to public service obligations.

Rail transport is any movement of persons or goods carried out by rail vehicles by transport operators on railway infrastructure.

Rail transport is classified into public rail transport and own-account rail transport.

Public passenger transport is transport services for passengers which are of general economic interest, and which are provided to the public on a non-discriminatory and continuous basis, and own-account rail transport is transport carried out in the interest of own activities with owned or leased means of transport.

Public rail transport is carried out only on the basis of a transport contract, and the transport contract is concluded and executed in accordance with the regulations of the Romanian Civil Code, the Romanian Regulation on Carriage by Rail, the provisions of Government Ordinance No 7/2005 and the international agreements and conventions to which Romania has acceded (GEO No 12 of 1998 on transport on Romanian railways and the reorganisation of the Romanian National Railway Company, Article 1(6) and (7)).

As a result, the transport contract is the contract by which a party, called a passenger rail operator, a public service operator, which holds a transport licence and operates on the railway infrastructure, under the conditions laid down by law, undertakes to transport the passenger to their destination, within the country or in international traffic, on time, unharmed and safely, in return for a fare paid by the passenger, and to provide them with appropriate conditions with a high degree of safety, in environmentally friendly and efficient conditions.

The contract for the carriage of passengers by rail is a synallagmatic contract, as it gives rise to mutual and interdependent obligations on both contracting parties, the main obligations being: the obligation of the carrier to carry a certain person or persons safely from one place to another and the obligation of the passenger(s) to pay the carriage price.

It is, as a rule, an onerous contract (Romanian Civil Code, Art. 1172) because each party seeks to obtain a benefit in return for its performance: the passenger wants to

The Legal Regime of the Railway Passenger Carrier in the Romanian Legislation

travel to the destination and the carrier wants to obtain the price. As an exception, rail transport operators may grant free fares, facilities or discounts on the basis of the provisions of regulatory acts, but only if the authority, agent or organisation requesting the facility or discount provides the corresponding compensation (GO No 7 of 2005, Art. 4). Thus, children up to the age of 5, for whom a separate seat is not required, are carried free of charge and without a travel card, and children up to the age of 10 pay 50% of the fare and the train supplement and are entitled to a separate seat.

The contract for the carriage of passengers by rail is a commutative contract. According to Article 1173 of the Civil Code, a contract is commutative if, at the time it is concluded, the existence of the rights and obligations of the parties is certain and their extent is determined or determinable. A contract for the carriage of passengers by rail meets the legal requirements for it to be classified as commutative, because the parties to it know or can know from the beginning the existence and extent of their rights or, in other words, from the beginning they have a precise idea of the legal consequences which their commitment will produce.

The contract for the carriage of passengers by rail is a contract of adhesion. It is obvious that we live in an economic and social context which means that the majority of contracts, especially those where the parties are individuals on the one hand and professionals on the other, are adhesion contracts, i.e. those which involve adherence to an existing offer.

The doctrine (Piperea, 2019: 138-139) notes that, currently, the parties' agreement of will - which is the classical theory in defining the contract - is only one component in its formation and that this component must be doubled by *interest* - the parties' interest in concluding the contract. In other words, the contract in its current form is a combination of legal requirements - which involve the parties' will being valued, freedom to contract and to choose a contractual partner, good faith in negotiations at the time of conclusion and in the performance of the contract, the legal equality of the parties, and economic requirements - which involve aspects such as the parties' interest, the usefulness of the contract for the parties, continuity in the professional's activity and risk-taking.

In all this context, the concept of contractual balance must take precedence because it is the main pillar of the contract and it is often ensured by a very detailed and rigorous regulation of the professional's activity by the legislator; the balance of the parties' performance presupposes the reconciliation of the parties' interests (Piperea, 2019: 139).

Public rail transport is considered, according to the law (GEO No. 12 of 1998, art. 1 paragraph 3), as a strategic sector of national interest, an essential service for society, contributing to free movement, to the resolution of major interests of the economy, to the movement of people, goods and other goods, even fulfilling specific tasks for the needs of the country's defence.

Given the importance of this type of activity, this contract is considered to be more than a contract of adhesion, a *regulated contract*, in the sense that by law it is constructed in its entirety or in its essential part and these regulations are binding, on the one hand, for the professional who performs that activity, and, on the other hand, for the client who has as options to adhere or not adhere to the already constructed contract, to its pre-established content (Piperea, 2019: 10).

Therefore, rail passenger transport is a passenger transport service that is provided by rail passenger operators holding a transport licence and operating on the

railway infrastructure, under the terms of the law, namely GEO no. 12 of 1998 on transport on Romanian railways and the reorganisation of the Romanian National Railway Company, as amended by Law no. 205 of 8 November 2019 for the approval of Government Emergency Ordinance No. 83/2016 on some measures to streamline the implementation of transport infrastructure projects, some measures in the field of transport, as well as for the amendment and completion of some regulatory acts.

Public passenger transport is that type of transport which is of general economic interest and which is provided to the public on a non-discriminatory and continuous basis, offering a uniform information service and having a uniform ticketing system and a fixed timetable.

The public service operator is any public or private undertaking or group of such undertakings operating public passenger transport services, or any public body providing public passenger transport services.

All those providing public passenger transport services do so on the basis of a public service obligation, i.e. on the basis of a requirement defined and laid down by a competent authority, and are obliged to provide public passenger transport services of general interest which an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without remuneration (Regulation EC No 1370/2007 of the European Parliament and of the Council of 23 October 2007, Article 2(a), (d) and (e)).

Substantive conditions of the contract for the carriage of passengers by rail. The essential conditions for the validity of a contract for the carriage of passengers by rail are the conditions common to any agreement: capacity to contract, valid consent of the party to be bound, a specific subject-matter and a lawful cause. Public rail transport is carried out only on the basis of a transport contract and, according to GEO No 12 of 1998, a contract for the carriage of passengers by rail may be concluded only in compliance with and under the conditions of the Civil Code, the Romanian Regulation on Carriage by Rail and the international agreements and conventions to which Romania is a party.

With regard to consent, a particular feature is the situation of the professional carrier who is in a state of permanent offer of services to the public (Romanian Civil Code, art. 1958 para. 3) and the fact that the carrier is not entitled, except in cases expressly provided for by law, to refuse to carry out the transport. Moreover, the special law on the subject provides for three distinct situations: persons admitted to transport, persons excluded from transport and persons conditionally admitted to transport.

The principle is that people with valid travel cards are allowed to travel. However, according to Art. 9 of O. No 7 of 2005 approving the Romanian Regulation on Carriage by Rail, persons who do not comply with the regulations and provisions of the railway operator are excluded from transport. The following persons are also not allowed on the train and in the station or may be expelled: persons who by their behaviour disturb other passengers or cause damage to rolling stock belonging to the rail transport operator or who do not comply with the provisions of the regulations; persons who, due to illness, inconvenience other passengers, unless they are travelling with payment of the whole compartment reservation; persons who insult or assault the staff of the rail transport operator or the infrastructure manager(s) on duty.

There is also a third category, those who are admitted to transport, but on condition. In this respect, the transport of sick people with contagious diseases is

The Legal Regime of the Railway Passenger Carrier in the Romanian Legislation

regulated, as a rule, by joint instructions of the rail transport operator and the state authority for public health.

At the same time, rail passenger transport operators may lay down, by means of their own regulations, other arrangements for the admission of passengers to transport. According to the Uniform Rules on Rail Transport in Romania, applicable to operators and beneficiaries of public rail passenger transport, non-contagiously ill persons transported on stretchers or trolleys may travel in class passenger carriages, but only on the basis of medical certificates specifying this mode of transport and the fact that the sick person in question is not suffering from a contagious disease.

From the perspective of the other party, i.e. the passenger, liner transport involves transport conditions laid down in advance by the carrier and made known to the public. Basically, it is up to the person wishing to travel by such a means of transport to decide whether or not to conclude the contract.

The object of the contract, according to Article 1225 of the Romanian Civil Code, is represented by the legal operation, i.e. the transport. The carrier may refuse transport if they do not have the appropriate means of transport to carry out the carriage, and the transport must be lawful because sometimes aspects relating to public safety or the operating conditions of the means of transport justify the carrier's refusal to carry certain persons. The impossibility of transport must exist at the time the contract is concluded and must be objective. In this respect, the special law (GO No 7 of 2005, art. 8) on the subject specifies that the rail transport operator carries out passenger transport only if transport is possible with the available agents and means of transport and transport is not prevented by circumstances which the rail transport operator cannot avoid and whose removal does not depend on them.

With regard to the carrier, both the general rule and the special law lay down particular elements with regard to capacity of use. Thus, according to the rules of the GO No 19 of 1997, only persons who carry out transport activities *in the public interest* may carry out transport activities and conclude transport contracts, and according to the rules of the Civil Code only carriers who *offer their services to the public in the course of their professional activity*. Rail passenger transport, according to the special law, is a public transport service and is provided by licensed rail passenger operators operating on the railway infrastructure.

As far as the passenger is concerned, the rule is also the capacity of exercise, i.e. the person's capacity to conclude legal acts alone (Romanian Civil Code, art. 37). Given the regulations on the capacity of exercise of natural persons, the content of which is transposed in the special regulations on the transport of persons in different ways, depending on the type of transport, the minor with restricted capacity of exercise can make alone acts of conservation, acts of administration which do not prejudice them, as well as acts of disposition of small value, of a current nature and which are executed at the time of their conclusion. The current acts of disposition of small value include, for example, obtaining a travel card, which is translated, in fact, in the conclusion of a transport contract (Baias, Chelaru, Constantinovici, Macovei, 2012: 47).

The case does not differ from the rules of civil law already discussed in that the provisions of the Civil Code are applicable to it, as follows: for the carrier, the purpose for which the contract of transport was concluded is to obtain the price of the transport in which their profit is included, and for the passenger, the purpose is the movement in space of their own person.

Public rail passenger transport (GEO No 12 of 1998, Article 5) is, by law, a social public service. For these services, public rail transport operators receive from the State budget or local budgets, as appropriate, the difference between the fares set with the approval of the competent public authorities and the actual transport costs, plus a profit share. In addition, in the case of public passenger transport services for certain categories of natural or legal persons who benefit, by order of the competent public authorities, from reductions in transport fares, the act which provided for the granting of these reductions provides for appropriate compensation (EC Regulation No 1370 of 2007, Article 3) for the transport operator.

Legal nature and functions of the transport document. The functions of the transport document, as they result from the analyses made in doctrine (Căpățînă, 2000: 74-77) regarding the legal nature of the transport document, can be summarised as follows: the transport document is the main *instrument of proof* for the parties, providing evidence of the existence of the contract of carriage and of the obligations assumed by the parties; the transport document has a guiding or leading function because the travel instructions for a given journey or the forwarding instructions, in the case of a contract for the carriage of goods, are set out in the contract and are very important for the proper performance of the carriage; the transport document has a *legitimising function* because the holder of the document is, as a rule, the holder of the rights arising from that document. Thus, in the case of a contract for the carriage of passengers, the passenger has the right to request the contracted journey under the contracted conditions, failing which he has the right to claim compensation.

Transport documents are, in general, documents of value in the case of contracts for the carriage of goods and documents of legitimation in the case of contracts for the carriage of passengers.

Documents of title are documents embodying a claim or a right in rem which may be enforced by the holder either against the debtor at a certain time or against the goods to which they refer. They can be, in a classification made by the doctrine (Piperea, 2019: 745-746), in: *titles representing a right in rem/titles representing goods* and whoever has the legitimate possession of the document (the carrier of goods) has possession of the goods and will hand them over only to the one who presents the title (the consignee when transporting the goods); *documents entitling the debtor to a benefit*, which may consist either in the payment of a sum of money (bonds, government securities, bills of exchange, cheques) or in the delivery of a certain quantity of goods or the provision of a service (transport documents, travel documents, stamps, postal marks); *certificates of participation*, i.e. shares issued by companies and certificates of participation in open-ended investment funds.

Professionals use certain documents in their work which have the characteristics of debt securities but are not debt securities. They are *legitimating documents*, referred to by the doctrine as improper securities (Cârpenaru, 2012: 605) and they prove the existence of legal relationships that serve to legitimise the right of the holder. The holder of such a title is considered to be entitled to receive the benefit to which the title refers.

Therefore, in legal terms, the travel card is a *legitimation document*.

Thus, in the case of a contract for the carriage of passengers by rail, the status of passenger is acquired by the person in possession of a valid travel card for the train, route and class chosen for the journey in question. In other words, the right to transport belongs, according to the special law, to the passenger who possesses a valid ticket for

The Legal Regime of the Railway Passenger Carrier in the Romanian Legislation

the date, train, class and service used and which is obtained in accordance with the regulations in force. *Per a contrario*, a passenger who does not possess a valid travel card, the rail transport operator does not recognise any right and, consequently, will not be liable for any damage suffered by them. At the same time, the passenger is obliged to keep their travel document with them throughout the journey and to present it to the train staff or the rail transport operator's agent for verification when requested to do so.

In this respect, it is forbidden for unauthorised persons to return the travel cards and the travel cards found in such cases will be cancelled and the passengers will be considered as without travel cards. The transfer of nominal or discounted travel cards to other persons who are not entitled to them is also not permitted, and travel cards found in this situation will be retained by train staff and the passengers concerned will be deemed not to have a travel card.

As regards the time of conclusion of the contract for carriage, this is usually before the start of performance of the contract. Thus, with regard to the contract for the carriage of goods, there is no express provision in the Code which, in a separate text exclusively reserved for this legal issue, stipulates that the obligation to draw up the transport document lies with one of the parties. However, it is clear from the body of rules as a whole that the obligation is incumbent on the consignor, unless the parties or the general law provide otherwise. The text of the Civil Code supports the idea that the preparation and, implicitly, the delivery of the transport document to the carrier is the responsibility of the consignor and that the liability for defective preparation, materialised by omissions, insufficiency or inaccuracy of the declarations in the transport document, rests with them.

The rule also applies to the passenger's travel card, i.e. the travel card/ticket must be obtained before the journey begins.

Travel cards are obtained at stations, agencies, from authorised agents, from the train driver or by electronic means, under the conditions laid down in advance by the transport operator. The passenger is obliged to check that the travel card corresponds to their requests when receiving it.

The rail transport operator is responsible for making public the rules of use and the periods of validity of travel cards (O.G. No 7 of 2005, Article 11).

As an exception to the rule, the travel card can also be obtained during transport: a passenger who does not present a valid travel card on the train is obliged to pay the train fare, and if they refuse to pay the train fare, they are considered an offender.

Legal regime of the obligations of the rail transport operator. The main obligations of the rail carrier are common to those in the general regulation, such as: the obligation of the professional carrier to remain in a state of permanent offer to the public under their conditions of transport; the obligation of the carrier to take the passenger to the place of destination unharmed and in safety; the obligation of the carrier to perform the transport within the time limit; the obligation of the passenger carrier to have liability insurance; the obligation of the carrier to provide the passenger with a seat corresponding to their travel card; the obligation of the carrier to carry children travelling with the passenger free of charge or at a reduced fare, under the conditions of the special law; the obligation of the carrier to carry the passenger's luggage free of charge, in the quantity and under the conditions laid down by the provisions of the special law, and others specific to this type of transport, such as: the obligation to

inform, the obligation of the rail carrier to refund the consideration received for carriage not carried out in full or in part.

Obligation to inform. The obligation to provide information is based on one of the fundamental principles of civil law, the principle of good faith. Although this principle is not precisely defined in the current Romanian Civil Code, it underlies many contractual and pre-contractual obligations, and the content of this concept is defined by case law. The Civil Code enshrines this principle in the various aspects it regulates. Thus, in Article 14 of Chapter III - Interpretation and effects of civil law, it sets out this principle as a general rule for any natural or legal person who must respect it in any exercise of their rights and performance of their civil obligations, while establishing it as a relative legal presumption. Another regulation of good faith is provided by Article 1170 on contract, which sets out the scope of this principle in contractual matters: it covers the pre-contractual period during which negotiations take place, the mechanism for concluding the contract and its performance. It is this rationale that has led scholars to assert that the general principle of good faith is an important governing principle of contract theory (Zamşa, 2011: 236) in general.

Related to the pre-contractual stage, the Code enshrines in the matter of negotiations in Article 1183 Civil Code, the obligation of the party engaging in a negotiation to comply with the requirements of good faith, expressly stating that the parties may not agree in any way to limit or exclude this obligation.

This principle is therefore also reflected in the Civil Code in pre-contractual matters and is the legal basis for a pre-contractual obligation - the obligation of pre-contractual information. Doctrine considers this obligation to be implicit and legal (Pop, Popa, Vidu, 2012: 93-94). This obligation is all the more necessary where a professional is involved who, in the exercise of his activity, is obliged, depending on the activity they carry out, to fulfil it. Moreover, consumer law expressly enshrines this obligation and establishes a high degree of formalism as to how it must be fulfilled (Piperea, 2019: 52).

In this respect, the rail carrier, as a professional, is also obliged to provide pre-contractual information, which is translated into practice by the obligation to equip passenger stations with information desks, information boards clearly displaying the composition of trains and the main connections between trains, as well as other necessary information for passengers. It will also display passenger train routes and fares for passengers in stations in a place visible to passengers, announcing to passengers, via booster stations, the arrival, stopping and departure of trains from the station.

The obligation of the rail carrier to remain in a state of permanent offer to the public in its conditions of transport. This obligation is legally regulated in the Civil Code by the provisions of Art. 1958 para. 3 of the Romanian Civil Code, which stipulates that the carrier offering his services to the public must carry any person who requests their services, unless they have a valid reason for refusal. The law does not specify what is meant by "a good reason for refusal", but in special laws or in the carrier's regulations, we find situations of this kind. The rail carrier carries passengers only if the transport is possible with the agents and means of transport available to them which enable the regular needs of the traffic to be met, and only if the transport is not prevented by circumstances which the rail carrier cannot avoid and the removal of which does not depend on them.

The right of transport belongs to the passenger who is in possession of a valid travel card for the date, train, class and service used (OG No 7 of 2005, art. 14).

The Legal Regime of the Railway Passenger Carrier in the Romanian Legislation

According to the specific regulation in this field, there are three categories of passengers: passengers admitted to transport, passengers excluded from transport and passengers conditionally admitted to transport. Thus, passengers who have valid travel cards for the train, route and class chosen for the journey are admitted to transport, and passengers who do not comply with this Regulation and the provisions of the rail transport operator, which have been made public, are excluded from transport (OG No 7 of 2005, art. 9).

The following persons shall not be admitted to the train and station or may be expelled: persons who by their behaviour disturb other passengers or cause damage to rolling stock belonging to the railway carrier, persons who, due to illness, disturb other passengers, unless they are travelling on payment of a whole compartment reservation, persons who insult or assault the staff of the railway carrier or the infrastructure manager(s) while on duty.

The obligation of the rail carrier to take the passenger to the place of destination unharmed and safe. The carrier's obligation is: a contractual obligation, an obligation to do, an obligation to provide services and an obligation of result, an obligation of safety.

From the point of view of its content, the obligation to carry persons covers, in addition to the movement operations, also the embarkation and disembarkation operations. This is provided for in Article 2002(1) of the Civil Code and its effect is that the carrier's liability will cover both the damage suffered by passengers and their luggage during transport and during embarkation and disembarkation operations. In other words, failure to carry out or improperly carrying out embarkation and disembarkation operations will give rise to contractual liability, as will the actual operation of the journey.

At the same time, according to Article 22 of GO no. 7 of 2005, the rail transport is liable for damage resulting from death, injury or any other injury to the physical or mental integrity of the passenger, caused by an accident, in connection with the operation of the railway, occurring while the passenger is in the vehicles or in premises belonging to the operator, respectively during boarding and disembarkation operations. Their liability shall also extend to the objects which the passenger, victim of such an accident, had on their person.

Obligation of the rail carrier to carry out the carriage within the time limit laid down. In general theory, the carrier's liability to carry out the transport within the time limit laid down also follows from Article 2004(2)(a) of Directive 2004/49/EC. 2 of the Romanian Civil Code, which establishes the carrier's liability for direct and immediate damages resulting from failure to perform the carriage, from performing it under conditions other than those laid down or from delay in performing it. Liability is contractual.

Depending on the type of transport, some carriers have time limits for performing the transport laid down by the legislator or the authorities in law, others set them unilaterally and make them known to the public, and others set them by agreement.

In rail transport, delays to trains must be made known to the public by the infrastructure manager, either by display at stations and through the signal installations or by verbally informing train staff. If, because of the delay of the train, the passenger does not catch the connecting train scheduled for the onward journey, for which they have a travel card, the rail carrier shall be obliged to carry them with their luggage, without charging new fares, on the first train of the same or lower rank, on the same or

another route, so that they reach their destination with the least delay. In the event of a train being suspended, if this fact was not known before departure from the starting station and the passenger does not wish to continue the journey by other trains or on other routes, the rail transport operator shall be obliged to bring them back to the starting station, with the first train in service, free of charge, and shall refund the fares paid for the distance not travelled. As an exception, if the interruption or suspension of a train has been announced the day before departure from the starting station, passengers will pay the fares for the detour.

At the same time, if the running of passenger trains is interrupted due to the poor condition of the railway infrastructure, the infrastructure manager(s) shall organise, under the existing technical conditions, a service for passengers and luggage transport by other vehicles. The fares paid for transport by these vehicles will be borne by passengers if the disruption has been announced before the departure of the train from the starting station (GO No 7 of 2005, Art. 10).

Obligation of the rail carrier to refund the consideration received for transport not wholly or partly performed. As a general approach, the refund of the consideration received by the rail carrier for transport not performed, in whole or in part, shall be made in accordance with the provisions of the Uniform Rules and the rail operators' own regulations. In this respect, the Rules provide for a number of situations in which the transport charge shall be refunded in full or in part, as appropriate. By way of example, we mention situations such as: where the travel card has not been used or has been used only in part, where the passenger has not been offered a seat or has been placed in a class or train of a lower category than that indicated on the travel card, where the train for which the travel card was issued is no longer running, in cases of force majeure, etc.

The obligation of the rail carrier to provide the passenger with a seat corresponding to their travel card. Means of passenger transport are diverse, with different classes, levels of comfort, degrees of speed; they are means of transport where it is possible to travel standing up. For example, in rail passenger transport, pursuant to Article 12 of GO No 7 of 2005, the passenger can take a seat on the train, respecting the right to class and the services provided by their travel card. On trains with a reservation system, the passenger may only occupy the seats indicated on the travel card. A passenger who cannot obtain a seat and does not consent to travel standing shall have the right to request reimbursement of the travel card for the journey not made, to defer the journey or to pay the difference for travel in a higher class, in accordance with the provisions of the Uniform Rules or the rail operators' own regulations, and if the passenger cannot occupy the seat reserved in accordance with the travel card, the train staff shall be obliged to provide them with another seat, within the limit of the seats available on the train, in accordance with the provisions of the Uniform Rules or the rail operators' own regulations.

Obligation of the rail carrier to carry children travelling with the passenger free of charge or at a reduced fare. Special laws detail this obligation differently. Thus, for rail transport, according to Article 13 of the OG No 7 of 2005, children up to the age of 5, for whom a separate seat is not required, are carried free of charge without a travel card, and children up to the age of 10 pay 50% of the fare and of the train supplement and are entitled to a separate seat. On trains with reserved seats they also pay the full ticket. In national road passenger transport with payment, according to Art. 41 para. 4, children under 5 are carried free of charge if they do not occupy separate seats.

The Legal Regime of the Railway Passenger Carrier in the Romanian Legislation

The obligation of the carrier to carry without further payment the passenger's luggage in the quantity and under the conditions laid down. Although the Civil Code regulates luggage as a general rule, as a concept it does not define it or make a clear distinction between hand luggage and registered luggage, referring to special laws.

Thus, a more comprehensive regulation of the rules on luggage and possibly a definition of luggage is to be found in the special regulations on the carriage of passengers and luggage by rail. According to Article 17 of the 2005 General Ordinance No 7, passengers may take hand luggage with them free of charge in passenger carriages. Hand luggage, as a rule, must be easy to handle, well packed, so that it is not possible for the contents to leak, damage or dirty the carriages or inconvenience other passengers. The passenger shall have at their disposal for their hand luggage only the space above the seat they occupy or an equivalent space in the luggage compartment of the carriages. For rail transport, the total mass of hand luggage permitted per occupied seat is 30 kg. There are also prohibitions, in that the following may not be carried as luggage: materials and objects excluded from the carriage of luggage, objects likely to inconvenience or annoy passengers or cause damage to passengers, the rail transport operator or the railway infrastructure manager, objects prohibited by the regulations of the administrative authorities, certain living creatures. As a rule, animals, birds, reptiles, fish, live insects may not be carried in passenger carriages (Law No 110 of 2006, Article 18). The supervision of the objects that the passenger takes with them in the carriage is the passenger's responsibility and, in principle, the passenger is liable for any damage caused by the objects and living creatures that they take with them in the carriage. The carrier remains liable if it is proved that the luggage is lost due to their fault.

The carrier shall have the right to ascertain, in the presence of the passenger, the nature of the articles introduced into the passenger carriage or its premises. If it is not possible to identify the person in possession of the items to be checked, the carrier shall carry out the check in the presence of law enforcement authorities.

Obligation of the passenger carrier to have liability insurance. The carrier is obliged to have civil liability insurance, concluded under the conditions of the law, according to the general rules of the Romanian Civil Code. This obligation of the carrier is only generally applicable to the carrier of passengers and luggage, not to the carrier of goods. The importance of the carriage of passengers has determined that, regardless of the mode of transport or whether the carriage is remunerated or free of charge, the carrier is obliged to take out civil liability insurance (Scarlat, 2021: 9-22).

Closing arguments. The legal regime of the rail passenger carrier is provided for by the regulations of GO No 7 of 2005 in an almost complete manner, this regulation providing legal solutions for the essential aspects of the formation and execution of such a contract. In fact, the regulation of GO no. 7 of 2005 is broad in general, and it provides definitions for a number of terms specific to the field of transport that the common law, the Romanian Civil Code, neglects to define, although it uses them in its content: this is the case of the rules on luggage and its definition or the notion of reimbursement.

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
- Căpățînă, O., Stancu, Gh., (2000). *Dreptul transporturilor. Partea generală*, Bucharest: Lumina Lex Publisher

- Cărpenaru Stanciu, D. (2012). *Tratat de drept comercial român*, Bucharest: Universul Juridic Publisher, București, 2012, p. 605.
- Piperea, Gh., (2019). *Contracte și obligații comerciale*, Bucharest: C.H. Beck Publisher
- Pop, L., Popa, I.F., Vidu, S.I., (2012). *Tratat elementar de drept civil, Obligațiile*, Bucharest: Universul Juridic Publisher
- Scarlat, D.I., (2021). *Dreptul asigurărilor: note de curs și aplicații practice*, Craiova: Sitech Publisher
- Zamșa, C., (2011). *Relația dintre răspunderea civilă contractuală și delictuală în concepția noului Cod civil*, în (in) *Colectiv*, Noile Coduri ale României. Studii și cercetări juridice, Bucharest: Universul Juridic Publisher
- Codul civil român (The Romanian Civil Code) available online at: <https://legislatie.just.ro/Public/DetaliiDocument/175630>
- O. G. nr. 7/2005 pentru aprobarea Regulamentului de transport pe căile ferate din România (G.O. no. 7/2005 for the approval of the Romanian railway transport regulation) available online at: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/75842>
- Ordonanța de Urgență nr. 12 din 7 iulie 1998 privind transportul pe căile ferate române și reorganizarea Societății Naționale a Căilor Ferate Române (Emergency Ordinance No. 12 of July 7, 1998 regarding the transport on the Romanian railways and the reorganization of the National Society of Romanian Railways) available online at: <https://legislatie.just.ro/Public/DetaliiDocument/15140>
- Legea nr. 55 din 2006 privind siguranța feroviară (Law No. 55 of 2006 regarding railway safety) available online at: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/70627>
- Legea nr. 110/2006 privind aprobarea Ordonanței Guvernului nr. 7/2005 pentru aprobarea Regulamentului de transport pe căile ferate din România Convenției din 9 mai 1980 cu privire la transporturile internaționale feroviare – COTIF (Law No. 110/2006 regarding the approval of Government Ordinance no. 7/2005 for the approval of the Romanian railway transport regulation of the Convention of May 9th, 1980 on international railway transport) available online at: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/71590>
- Regulamentul CE nr. 1370/2007 al Parlamentului European și al Consiliului din 23 octombrie 2007 privind serviciile publice de transport feroviar și rutier de călători și de abrogare a Regulamentelor CEE nr. 1191/69 și nr. 1107/70 ale Consiliului (EC Regulation No. 1370/2007 of the European Parliament and of the Council of October 23, 2007 regarding public rail and road passenger transport services and repealing CEE Regulations no. 1191/69 and no. 1107/70 of the Council) available online at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32007R1370>.

Article Info

Received: October 22 2022

Accepted: November 02 2022

How to cite this article:

Stanciu, C. (2022). The Legal Regime of the Railway Passenger Carrier in the Romanian Legislation. *Revista de Științe Politice. Revue des Sciences Politiques*, no. 76, pp. 124 – 136.