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Flight delays, flight cancellations or denial of boarding – rights of passengers in the Republic of Serbia

Air travel, although often the fastest and most comfortable mode of transportation can sometimes bring unforeseen situations such as delays, flight cancellations or denied boarding. Therefore, it is important that travellers are aware of their rights so that they can protect their interests.

The European Union (“EU”) has adopted comprehensive regulations dealing with these issues, and Regulation of the European Parliament and the Council (EC) no. 261/2004 (“**Regulation**”) establishing common rules regarding compensation for damages and assistance to passengers in the event of denied boarding and cancellation or long flight delays, has been implemented in the legislation of the Republic of Serbia since the Republic of Serbia is a signatory to the ECAA treaty (“**ECAA treaty**”) establishing a European Common Aviation Area (“**ECAA territory**”). According to the domestic Law on Obligations and Fundamentals of Property-Legal Relations in Air Transport (“*Official Gazette of RS*”, no. 87/2011 and 66/2015, “**Law**”), all air passengers in the Republic of Serbia have the same rights as air passengers within the EU. In the following text, we will deal in more detail with the specific rights of passengers and the procedures for realizing them in accordance with Serbian legislation.

Rights of passengers in the Republic of Serbia

The passengers are guaranteed minimum rights in case of:

1. denial of boarding against the will of the passenger;
2. cancellation of a flight;
3. flight delays,

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

The passengers are entitled:

1. for all flights departing from the airport located in the Republic of Serbia;
2. departing from an airport located in a third country to an airport situated in the Republic of Serbia, unless they received benefits or compensation for damages and were given assistance in that third country, and if the operating air carrier of the flight concerned is air carrier of member state of ECAA treaty.

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Denied boarding

When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. In addition, volunteers exercise the right to assistance in the form of reimbursement of costs or re-routing. If an insufficient number of volunteers come forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will, in which case, shall immediately compensate them for the damages and provide assistance in the form of reimbursement of costs or re-routing of the trip, enable the right to care – i.e. provide them with meals and refreshments suitable for the waiting time, hotel accommodation (if necessary for one or more nights, as well as if it is necessary to stays longer than the traveller planned), transportation from the airport to the place of accommodation (hotel or something else), as well as two free phone calls or two free messages via telex or fax or e-mail (“**right to care**”).

Cancellation of a flight

In case of cancellation of a flight, the operating air carrier is obliged to offer the passengers one of two options:

1. reimbursement of costs;
2. re-routing to another flight.

The operating air carrier is also obliged to provide all passengers with meals and refreshments in accordance with the waiting time, as well as two free phone calls or two messages via telex or fax or e-mail, and if the route is diverted and the scheduled departure time of the new flight is at least one day after the departure time which was planned for the canceled flight, free hotel accommodation (in cases where a stay of one or more nights is necessary or when an additional stay is required compared to the intended one) and transportation from the airport to the place of accommodation (hotel or something else).

All passengers whose flight has been canceled are **entitled to compensation** unless the passengers have been informed of the flight cancellation as follows:

- at least two weeks before the scheduled time of departure; or
- between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
- less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

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

Flight delay

When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

- a) for two hours or more (in the case of flights of up to 1500 km); or
- b) for three hours or more (for flights within the ECAA territory of more than 1,500 km and of all other flights between 1,500 and 3,500 km);
- c) for four hours or more in the case of all other flights,

passengers shall be offered by the operating air carrier free meals and refreshments according to the waiting time, as well as two free telephone calls or two free messages by telex or fax or e-mail.

When the reasonably expected time of departure is **at least the day after** the time of departure previously announced, the passengers are entitled to free hotel accommodation (if necessary for one or more nights, as well as if it is necessary to stay longer than the traveller planned), and free transportation from/to the airport to/from the place of accommodation.

If the flight is delayed by **at least five hours**, the passenger has the right to reimbursement of costs, in an amount corresponding to the full price of the ticket for which it was purchased, for the part or parts of the trip that were not completed and for the part or parts of the trip that were completed, if the flight is longer does not serve the purpose originally planned by the passenger, together with, when relevant, a return flight to the first point of departure, as soon as possible.

What is important to emphasize is that Article 7 of the Regulation does not provide for the right to compensation for damages to the passenger in case of flight delay, but only in case of flight cancellation and denial of boarding. Consequently, and as the same provision has been implemented in the Serbian legislation, in the event of a flight delay, there is no obligation on the part of the operating air carrier to compensate the passengers. However, the practice of the European Court of Justice ("ECJ") is of a different opinion. Namely, in November 2009, the ECJ pronounced rulings in the so-called Sturgeon case (joined cases C-402/07 and C-432/07 Sturgeon and Others) stating that *flight delays of more than three hours are subject to compensation in accordance with the Regulation*. The ECJ justified equating long delays with denied boarding and flight cancellations by reasoning that the impact of long delays on passengers can be just as noticeable as in the case of flight cancellations or denied boarding against the will of the passenger. Accordingly, in cases of flight delays of three or more hours, air carriers originating from countries that are signatories to the ECAA treaty, when deciding on passenger compensation claims, should take this practice into account, if the delay was due to their fault.

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Right to compensation

Passengers shall receive compensation amounting to:

- a) **EUR 250** for all flights of 1500 km or less;
- b) **EUR 400** for flights within the ECAA territory of more than 1,500 km, and for all other flights between 1,500 and 3,00 km;
- c) **EUR 600** for all other flights.

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

When passengers are offered re-routing to their final destination on an alternative flight, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked:

- a) by two hours, in respect of all flights of 1500 km or less; or
- b) by three hours, for flights within the ECAA territory of more than 1500 km and for all other flights between 1500 and 3500 km; or
- c) by four hours, with respect to all other flights,

the operating air carrier may reduce the compensation by 50%.

How to exercise the right?

Air passengers who are denied boarding, whose flight is canceled or whose flight is delayed, should submit a complaint to the airline in writing, stating the circumstances in which there was a longer flight delay/flight cancellation/denial of boarding the flight, and the passenger who believes that is entitled to compensation for damages should also highlight this request in the complaint, considering that air carriers in practice do not pay automatically compensation for damages.

Deadline for submission of complaint

In accordance with the Law, a complaint is submitted no later than **90 days** from the day the flight was completed or should have been completed.

Decision of operating air carrier on a complaint

If the complaint is approved, the damages are compensated in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

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If the operating air carrier does not comply with the complaint or does not respond to it within **60 days** from the date of submission of the complete documentation necessary for the complaint, the complainant has the right to report a violation of the law to the Directorate of Civil Aviation of the Republic of Serbia. Directorate of Civil Aviation however, is not authorised to oblige the air carrier to apply the regulations related to the compensation claim, but only has the legal authority for the aviation inspector, if, during the inspection supervision, he observes a violation of the provisions of the Law relating to the rights of passengers, to submit a request for the initiation of misdemeanour procedure.

Exercising the right through a court

If the operating air carrier does not comply with the complaint, the complainant can exercise his right in regular court proceedings by submitting a lawsuit for compensation of damages to the competent court. In accordance with the Law on Contracts and Torts (*“Official Gazette of the SFRY”, no. 29/78, 39/85, 45/89 - decision of the CCJ and 57/89, “Official Gazette of the SRY”, no. 31/93, “Official Gazette of SM”, no. 1/2003 - Constitutional Charter and “Official Gazette of RS”, no. 18/2020*) the claim for damages becomes time-barred in **three years** from when the injured party became aware of the damage and of the person who caused the damage.

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