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Rights of European passengers against American passengers

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Summary of the work

European and American passengers have the same basic regulation, which establishes what are airlines and passengers' minimum rights or obligation. Another law of the states completes this one and their courts solve if there is negligence or some misunderstandings. The legislation responsible that protects Europe passengers is the regulation n°261/2004, it includes all flights flying from a member state to another one or the ones that flies from a member state to a non member state if it is an European airline. In the case of America, its regulation (n° 14 CFR) establishes not only the compensation in cases as cancellation, denied boarding and long delays, otherwise lost baggage or the minimums for customer service plans, giving more power to the airlines to decide their own rules. Moreover the recent occurrences with terrorism that have affected airlines have developed more restrictions and rights of the passengers.

Introduction

In a world where globalisation is increasing constantly, the air transport can mobilise huge masses of people from a part of the world to another one in only some hours.

Air Transport is one of the most important services in the world, the most used transport to cross the Atlantic Ocean and an habitual transport in different sectors as: tourism, business, sanitary... I have wanted to know the difference between an European passenger and a United States' one. Nowadays, around 6.575.343 people used this mean of transport in more than 93.000 flights every day during 2014. This means that 2.400 million of people flied in more than 36 million of flights this year, according to IATA. Bureau of Transportation Statics found that in United States there are approximately 1,73 million passengers every year, this is around 631.939.829 passengers per year. In Heathrow-London airport, during 2013, there was a daily average of 104.221.899 passengers with arrival or departure to that airport. On the other part of Atlantic Ocean, Atlanta's airport's data was well below with an average of 94.431.224 passengers every day. Moreover, more than 60.000 passengers were affected due to the terrorism attack in Zaventem's airport, Brussels. As we can see in the table below, according to IATA data, the effects of 11- September terrorism attacks in United States were visible some years after. In order to growth again the number of passengers and ensure their safety, America develop new rights and obligations for airlines and passengers.

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011*
Revenues (\$ billion)	329	307	306	322	379	413	465	510	564	482	554	598
Passenger growth %*	8.6	-2.7	1.0	2.3	14.9	7.0	5.0	6.4	1.5	-2.1	7.3	4.4
Passenger numbers (millions)	1,828	1,793	1,792	1,849	2,064	2,211	2,328	2,497	2,507	2,479	2,681	2,793
Crude oil price (Brent) \$/b	28.8	24.7	25.1	28.8	38.3	54.5	65.1	73.0	99.0	62.0	79.4	110.0
Jet Fuel price \$/b	36.7	30.5	29.1	34.7	49.7	71.0	81.9	90.0	126.7	71.1	91.4	126.5
Net profit (\$ billion)	3.7	-13.0	-11.3	-7.5	-5.6	-4.1	5.0	14.7	-16.0	-9.9	18.0	4.0
Margin %	1.1	-4.2	-3.7	-2.3	-1.5	-1.0	1.1	2.9	-2.8	-2.1	3.2	0.7

So, it is not a surprise that more that in United States, Bart Jansen published in USA today that during the first six months of 2015 airlines complaints have growth a 20% against the past year, reaching the 9.542 complaints, almost 2000 more. As in Europe, the majority of the cases are due to cancellations, delays or missed connections.

Contextualisation and object of study

The objective of the work is find the answer of the question about who is more protected by the government in United States and Europe: airlines or passengers? Moreover, the majority of the complaints are about what can be interpreted as “extraordinary circumstance”; so, can we understand a terrorism attack as this type of circumstance? Are the American passengers more protected in that case? Will the passengers be compensated for the bothers caused? Did the recently terrorism attacks affected the legislation?

Description of methodology employed

In order to answer the above questions and to make statements, it has been used online and offline documental researched.

Results of the study

1. European regulation.

In Spain and the rest of Europe the current regulation is well known, although not everybody know when can ask for a economic compensation and if the airline has the reason when they say that the cancellation or the delay of the flight is due to an extraordinary circumstance, so I am going to explain the most important thinks about European regulation and the “HISTORY” of how has changed in order to be able to compare with the United States’ one and try to find the differences and the most protected passengers.

28 May 1999, the Council of the European Union published the unification of certain rules for international carriage by Air (Montreal Convention) because it was beneficial for European community that air carriers operate under uniform and clear rules. It borned as a necessity of modernise Warsaw convention (12 October 1929, Warsaw) and it must be applied to all international European air carriers. Not only European Union signed this Convention, states as United States, Chine, Madagascar or Namibia also did it; and not all the European

members did it during the first year, during the first half of 2000, Spain, Luxemburg signed it. Nowadays, ninety-two states operate under the same regulation to prevent misunderstandings and to guarantee that passengers have the same rights if they flight around the world. The convention is about the responsibility of the carriers and extent of compensation appears, and therefore the rights of passengers in case of delays or damages.

4 of February 1991 the European Union applied the first air transport regulation, as a response of the necessity to create a common action to protect the airlines' passengers. This regulation was applicable until 2004, when regulation n°261/2004 abolished it because the first one only looked for an unification of the meaning to all carriers of denied boarding (refusal to allow passengers who have a valid ticket, a confirmed reservation and the register has been submitted in time and following all conditions), passengers' rights in case of denied boarding, air carriers' duties in over sales cases. The reason to create a new one was that airlines continued denying boarding to a huge number of passengers, as well as the passengers who was affected for long delays or cancellations without notice. Moreover it goes with the Montreal Convention because that one does not establish communes' rules about economy compensation and assistance on the case of denies boarding, long delay or cancelled flights. As a difference from Montreal Convention, normative n° 261/2004 only deal with passengers' rights and airlines duties to guarantee that these rights are obeyed. This normative establishes an economic compensation, which goes from 250 to 600 Euros in cases of cancellation or denied boarding¹. Although European Union is studying the possibility to modify this normative and include the economical compensation in delays cases, as was interpreted in the Case C- 402/07. In the last both cases and if the delay is longer than 5 hours, airlines have to offer the reimbursement in 7 days of the whole cost of the passage, a return flight as soon as possible or conduct the passengers to the final destination with a comparable way of transport¹. Moreover if passengers suffer a long delay, a cancellation or deny boarding, it establishes that airlines will assist passengers with food and refreshments, two phone calls and if it is necessary to spend one or more nights waiting for the flight, airlines have to pay the accommodation and transport between the airport and the hotel¹.

Although the regulation include the cases of cancellation, denied boarding and long delays and it establishes the duties that airlines have, it says that they are exempt to economic compensation to passengers (but it is still compulsory to give them attention, following the articles 8 and 9), if the cancellation, denied boarding or long delay is due to an "extraordinary circumstance". The regulation defines an extraordinary circumstance as something that could not been avoided even if they had taken all reasonable measures to avoid it, as any circumstances that occur for instability political reasons, meteorological conditions incompatible with the flight, security risks, unexpected deficiencies affecting flight safety or strikes affecting operations. But since the implementation of the law, numerous complaints have appear to check if their delayed or cancelled flight was a real victim of an extraordinary cause or only an attempt by the airline to avoid having to pay the compensation.

¹ Regulation 261/2004

It was a sentence of 22 December 2008² which marked the principle² that have to be followed to determine if the flight breakdown was a cause to be exempt from compensation for the airline. As it has been explained before in the regulation, an extraordinary circumstance is one that could not be avoided even have taken all reasonable measures. Friederike Wallentin-Hermann claimed to Alitalia³ the amount of 250 Euros for the cancellation of their flight (from Vienna to Brindisi (Italia), stopping in Rome), under Articles 5 paragraph 1, letter c) and 7, paragraph 1 of regulation 251/2004 (previously mentioned), plus 10 Euros for telephone charges. The flight was cancelled five minutes before the departure by a complex motor breakdown, detected the night before. This cause Mrs Wallentin- Hermann, her husband and her daughter missed connecting flight, arriving to the final destination nearly four hours later. As in regulation n° 261/2005 does not define the concept of extraordinary circumstance, it was interpreted by Montreal Convention, in particular Article 19 (the carrier is not responsible if he proves that he and their agents have taken all necessary measures to avoid damage or that it was impossible to take such measures), although this concept does not appear in the Convention as a definition of extraordinary circumstance and article 19, 1991, refers to delays, however article 5⁴ deals with flight cancellation. . The judge pronounces “it is true that the normative does not explain explicitly the meaning of extraordinary, but it gives indicative examples, which can result in circumstances of this kind. For example, in this case, in the list mentioned above, it can be deduced that a technical problem might be defined as “unexpected deficiencies in flight safety, but it is also true that should be considered an exercise that is not inherent to the normal exercise of the air carrier activity and avoid its actual control because of its nature or origin.

Well, under the circumstances in which is developed the air transport and its technological complexity, airlines are confronted usually to technical problems. To avoid these problems and prevent an incident, aircrafts are subjected to complex controls regularly. In conclusion, the resolutions of these technical problems caused by maintenance failures should be considered inherent to normal activity of the air carrier exercise and therefore it can not be considered extraordinary circumstance”.

However, this sentence also establishes that the possibility to include some technical problems as an extraordinary circumstance should not be excluded, for example, in the case that the manufacturer of a device that is already integrated into the fleet, he informed to air carriers that this present a manufacturing defect. We can consider the same in acts of terrorism or sabotage. Furthermore, the sentence refers to the frequency as a reason to determine if it can be consider as an extraordinary or not, in judge’s opinion this fact can not constitute by itself a factor from which it can be decided the presence or absence of this circumstance. And the fact that an air carrier has respected all minimum rules is not enough to confirm that he has adopted all reasonable measures to avoid them.

². Case-C549/07

³ Linee Aeree Italiane SpA

⁴ Regulation 261/2004

One of the most recent cases is from 17 September 2015 in *Rechtbank Amsterdam*⁵ in which Mrs Van Der Lans, resident in The Netherlands, denounced the airline KLM for a delay of 29 hours in a flight departing on 13 of August 2013 from Quioto (Ecuador) to Amsterdam (The Netherlands). The delay was on account of a combination of faults: two pieces were defective, these were not available and they had to be sent by plane from Amsterdam and mounted afterwards. The pieces had not exceeded its lifespan nor its manufacturer had provided any indication that it could arise deficiencies. The court took into account the above sentence⁶ to render a judgement, which sentenced that the solution of technical problems was a normal activity of the air carriers and can not be qualify as an extraordinary circumstances.

2. United States of America

As in happens in Europe, United States' airlines are regulated under the Montreal Convention, where appears what are their duties and responsibilities, but they have their own regulation to complete about the sections that are not clear or that do not appear, for example the economical compensation.

As the law in United States of America is less known than the European one, I am going to explain it in detail to understand better which are the most important differences or similarities. The United States' department of transport (DOT), under its legal authority to prevent unfair and deceptive practices by airlines and travel agencies, adopted new standards in customer service and increase existing rules on foreign airlines. This law was published on 25 April of 2011 and in it appears a collection of 11 rules, in which the new customer service obligations for airlines was established: routes, fares and services, since they were deregulated in 1978. So, this law is an extension of the 30 December 2009, in which, the Department of Public Transport published a legislation which the government obligated to only a certain airlines in the country to adopt contingency plans for long delays, publish information about this and respond to the problems of the passengers (it was published some years after the European one). The regulation is powerful both in number of companies (now encompasses all aircraft with a capacity of more than 30 passengers to or from USA). On June. 8th, 2010 was published a notice of regulatory reform and it would be about:

1. Contingency plans for long delays.
2. Show the data of delays.
3. Customer service plans.
4. Contracts of the air carriers.
5. Response the complaints from passengers
6. Fin a solution for overbooking cases.
7. Publication of the full price.
8. Luggage and other ancillary charges.
9. Increases the price after the purchase
10. Notification of the status of their flight to passengers if there are changes.
11. Choice of forum.

⁵ Court of Amsterdam, Case- C-257/14

⁶ Wallentin-Hermann's sentence, Case-549/07

12. Peanut allergies.

The rules enact that air carriers should explain to passengers the process of file a formal complaint and respond them within sixty days later. In Europe there is not a limit time to answer.

In the case of contingency plans for delays, the law requires that foreign airlines entering or leaving United States adopt and adhere to these plans. Both contingencies such as customer services plans of national and international airlines should be published on its web pages.

National and international airlines have to allow that passengers disembark, subject to security in tarmac delay (this means that airline is held up on the ground but does not have access to the terminal) during 4 hours, notification of the status of delays every 30 minutes, including the reasons if they know them. In addition, if it is a problem of tarmac, air carriers must provide the necessary information.

Service plans for customers: foreign airlines, travelling from or to USA with more than thirty passengers shall adopt, follow and audit this plans. The legislation establishes standards to be followed by both, national and international airlines:

- Airlines are obliged to deliver the baggage in time. In the case that the luggage is loosed, the company has to return the money that the passenger paid for it. The American regulation fixed a minimum amount of money and it can be incremented by airlines and adjusted depending on the CPI (the amount is \$3400 from November 2008). In European legislation, the passenger will be compensated with a maximum amount of 1300 Euros.
- In case of flight cancellation or overbooking, the air carrier must return the total cost, including all the possible charges as baggage or choice of seats. Despite Europe's regulation deal with the fact that a company can reimburse the cost of passage in case of cancellation or denied boarding (as can be overbooking cases), it does not say nothing about the extra charges that a passenger can have paid.

In overbooking cases, the affected passengers will be economically compensated with an amount ranging between \$650 and \$1300 or 200% and 400% of a single ticket's cost, the smallest compensation (of the one-way fare, whichever is smaller). Moreover this amount can be adjusted every two years for inflation. Airlines must offer a "ticket to zero tariff". As European law does, American's airlines have to ask for volunteers' passengers for denied boarding.

For a national flight, passengers will not have economic compensation if:

- The reason for denied boarding is that passenger has not achieve the regulation established (for example hand over necessary documents as ID card)
- The flight has been cancelled.
- If the aircraft has been substituted for a smaller one for security or operational reasons.
- In a flight with less than seventy passengers for weight reasons that could affect the security and an alternative seat without cost is have been offered.
- If an alternative transport is offered and this will arrive at the final destination delayed an hour as a maximum, or if none, is planned to arrive at the first stopover.

In all other cases the passenger will be entitled to a financial compensation. The amount is:

- Passengers will have the opportunity to deplane in the tarmac delays if it is safe or if the air traffic control advises that if passengers get off would disrupt airport operations. When delay is higher than two hours, the company will provide passengers with food, water and medical attention. Moreover they will ensure that the temperature is comfortable.
 - a) Domestic flights: American Airline will provide the opportunity to deplane if the tarmac delay is higher than 3 hours.
 - b) International flight: different from domestic flights the opportunity to deplane will be provided if it is higher than 4 hours.

If the delays or the events are caused by events within the American Airline's control, the airline will provide their costumers accommodation; contrary to Europe, this is subject to hotel's availability. If delays or cancellations are caused by events beyond the control, the passengers are responsible for their own overnight accommodation, meals and other expenses. During extraordinary delays with more than 2 hours, for extraordinary reasons, airlines will provide water, food, and basic medical assistance... Moreover, they will relocate the clients on the next flight with available seats. Contrary to Europe, who is still obligated not to pay a compensation but yes to attend their passengers with food, beverage, accommodation and medical assistance if it was necessary.

- Cancellation

- The airline has to relocate the passengers with available seats, or in some circumstances on another airline or some other alternative means of transportation.
- If this is not possible, the airline has to provide reasonable overnight accommodation, subject to availability.

Sometimes it is necessary for flights land at a different location than the intended destination, this information will be given as soon as possible to the passengers, but there is not a maximum time to inform them.

According to the denunciation⁸ from Catherine Ray and her husband to American Airlines these were not the rights that they have. When a flight from Oakland (California) to Dallas (Texas) at six a.m. did not take off due to bad weather. About an hour later than the passengers was advised that they were not going to flight until the Dallas airport was opened, the pilot informed passengers who want to deplane could do it in that moment, but if they choose he said that the passengers will "finish this flight" and it would be "on their own", giving to understand that passengers would find an alternative transport by their own. After three hours on the tarmac, he said that an other bus was arriving if some other passengers wanted to deplane and that one would be the last one bus for the next six or seven hours. The passengers that decided not to deplane were provided with "two or three bars" and "two soda pops", moreover the toilets were broken. At nine p.m., passengers were obligated to deplane and spent the night at the airport. Ray denounced American airlines because they considered that existed "false imprisonment, negligence, intentional infliction of emotional distress, breach of contract, and fraud or deceit" and that everything had happened because of airline's "intentional or negligence lack of personnel, equipment and planning for ordinary weather disruptions and that airline did not

⁸ Case law 609 F.3 d 917, case date 02 July 2010

allow to deplane for financial benefit". Court precluded in part because the Federal Aviation Act (FAA from now on) made impossible Ray from bringing state law claims based on the safety decision to reroute the plane and that the Airline Deregulation Act (ADA from now on) pre-empted any state law to obtain compensation for any type of expenses during the delay. The Court established that Ray had to provide all the evidences to prove what she said As the American Airline's contract of carriage say that: "In case of extraordinary events, we will make all reasonable effort to ensure essential needs of food, water, restroom facilities and medical assistance are met. But we are not responsible for any incident or damages if we do not meet this commitment", this means that they are going to do... but if they do not do it, they are not responsible. "The court decision was that it is unnecessary to decide this case".

2.2 Virgin America:

According to Forbes.com, Virgin America is the best airline in America because the 83,5% of its flights arrived on time, only denied the boarding to 0,07 % passengers and customer complaints is the lowest one with 1,5%. Virgin America's fleet is composed by 60 aircrafts flying around 24 destinations in America. Although it does not fly to Europe but it is the best airline in United States, we are going to study the most important changes in the contingency plan respected to the national normative, which are:

- Delays:
 - o As American Airline if the tarmac delay is higher than 2 hours, the airline will provide all guests with free food, water and medical attention on board.
 - a) Domestic flights: If the delay is higher than three hours, Virgin Airlines will allow passengers deplane unless the Pilot in Command (PIC) determines that it is not safe. The American law determines 4 hours for tarmac delays.
 - b) International flight: if the aircraft has been on the tarmac for three hours, the PIC will coordinate operations to arrange for a gate or hand stand, and will order to deplane the passengers as soon as possible, unless the aircraft will be able to depart in less than thirty minutes.

As the law obligates, guests will receive the notifications with the most current information and will answer questions and assist passengers regarding the status of the delay or cancellation every 30 minutes from the Pilot In Command.
- Cancellation:
 - o On the one hand, if the reasons are within the airline control, Virgin America will rebook on the next flight. Unlike the delay, they will provide free hotel accommodation ensuring the essential needs (as the hotel – airport transportation or meals) if it is not possible on the same day.
 - o On the other hand, if the reasons are not within Virgin America's control, they will rebook on the next flight. When this is not possible on the same day, Virgin America will provide their guests with discounts for the accommodation (but there is not vouchers for meals or transportation)
- Overbooking
 - o In overbooking's cases, Virgin America will request guests to change their seats for compensation, including accommodation, travel credits

and/or rebooking on another flight to the destination. When there are not volunteers, they will disallow boarding to the last guests who checked in for the flight. In the case of unaccompanied minors or other guests that the company consider that they could have problems if the boarding is denied will be an exception.

- For lost baggage, American Airlines pay a compensation with a maximum of \$3500 (the compensation that establish the regulation was \$3400, but airlines could vary it in their contingency plans) and Virgin Airlines pay the amount that the DOT assigned, but if the passengers are far away from home, the company provides them with a complementary toiletry kit (which includes a socks, eye mask, toothbrush and paste, tissues, ear plugs and pen. The fact, is that this kit is the ones that the company gives to all of their passengers when they board, so the unique difference is that they provide to the passengers some hours before the board).

3. About terrorists attacks

3.1 Europe

In Europe, flights cancelled or delayed by a terrorism attack is exempt from financial compensation, because the cancellation or delay is due to an exceptional circumstances. However, airlines must either refund the ticket within seven days or be transported to their destination as quickly as possible. In addition, the airline is obliged to cover pension and accommodation expenses and telephone calls. The consumer should keep the bills in order they can be monetary compensated. If the company does not respond properly, the consumer must file a claim with the airline.

In the case of the last attack registered in Zaventem airport (Brussels) on 22 March 2016 by a terrorist group, the airport was forced to close for nearly a week. Flights were cancelled or diverted to other cities (for example, the day of the attacks it was expected a traffic of 650 aircrafts, about 50 were redirected to other airports such as Frankfurt, as Lille or Maastricht). Travellers who were affected were offered two alternatives: change their flight for another date or the possibility to relocate them to nearby airports from which one could travel by bus or train to the Belgium capital. According to the website of Vueling, they offered three possibilities for its customers: the reimbursement of the ticket price, the possibility of changing to a flight with up to two months away or two special flights from Barcelona to Amsterdam to carry all passengers trapped in Barcelona. In the case of main Belgian airline, subsidiary of Lufthansa: Brussels airlines, cancelled all flights arriving or departing from Zaventem, by which more than 24000 passengers were affected. For these passengers, the price of the ticket is going to be refunded, even those who were not refundable. Passengers who had reserved by third parties such as Expedia should contact to the site so that their money could be refunded.

According to CNT traveller, Air France gave the passengers until 27 March to change their itineraries for free, provided that they would travel before 31 March. Travellers who want to postpone their trip later than this date or cancelled their flight could do it before one year.

In the case of the airlines of America with arriving or departing from Brussels as:

- American Airlines: they are going to refund the tickets as long as passengers accomplish with the following criteria:
 - a. They must have a reservation with American Airlines, British Airways or Iberia.

- b. The scheduled flight should be from 22 to 29 March.
 - c. The new flight must be before 12 April.
 - d. The original stop or changed will be free for customer to Paris, Amsterdam, Frankfurt, Dusseldorf, Rotterdam or London.
- Air Canada: the national airline of Canada offered new free reservations for flights to or destined in Brussels between 22-28 March, but the new flight should be before 30 April.

In response to the terrorists' attacks that Paris and Brussels suffered, in April 14th, 2016, and in order to protect the passengers, the European Parliament adopted a new regulation as an important tool in the fight against terrorism, the use of Passenger Name Record data. This legislation will collect until 19 types of information of the passengers at the time of their reservation (such as personal details, itinerary, form of payment...) and companies will have to send them to the national authorities. This information will be collected in intra community and extra community flights. But it might only be used to investigate serious crimes as terrorism. This has been very criticised because this method uses passengers' personal information to control them.

3.2. United States

On September 11th, 2001 (11-S from now on), United States of America suffered its biggest terrorist attack in 21st century, to date. Nineteen terrorists of the Islamic state hijacked four commercial airlines and blew against two towers (the famous twin towers of New York), against the façade of the Pentagon and the fourth plane did not reach any objective and burst into the open field thanks to the confrontation of passengers and crew against terrorists. These attacks killed nearly 3.000 people and more than 6.000 were wounded. Moreover, during the following years, various flights were cancelled because people were scary and there was not sufficient demand to fill the aircraft. During 11-S, numerous flights suffered delays and cancellations.

This attack has been very important in the history, not only for rights but also for obligations of passengers, altering constantly the security's policies of international aviation. Although it is noteworthy that the strictest measures were not taken into aviation safety, but antiterrorism laws by states such as the United Kingdom, China, Canada and Russia, creating or tightening existing laws. The days following September 11th, by order of the government the flights were cancelled, furthermore, airlines also requested more days to be able to rescheduled their flights. The flights with departures or arrivals to Washington Reagan National Airport were cancelled by government from September 11th until the end of the month to pick up evidences and prevent further attacks.

Conclusions:

After study the main regulations applicable in the European and United States' territory, we can conclude that there are some differences that we can find and can help to determine who is more protected are:

Although in both cases, we can talk about a legislation that protect the consumers who are affected directly by an airline, in both cases there is another regulation that complete the Montreal Convention (which include the liability of the carrier and dimension of compensation for damage), in Europe's the regulation 261/2004 (which only establishes the financial compensation for delays, denied boarding or flight cancellation). On the contrary, in United States, the regulation of the responsibilities and rights of passengers appear

everything in a unique normative (which includes the Montreal Convention' norms). For the passengers is easier to understand and look for their rights in United States' regulation than in the European one, in which depending of what are looking for have to search in one or in another.

Moreover, United States' compensation takes into account if the passengers lose his stopover and the rights that passengers have in the case of tarmac delays, the European regulation does not pronounce it about those cases.

For the moment of compensation, passengers affected in United States have to be compensated at the moment of denied boarding with cash or a check, but if for some reason, as the alternative transport depart before they can be compensated, the airline have a maximum of 24 hours to pay; while passengers affected in Europe have to submit an application (written or online), this have to be accepted and then the payment is made. In Europe, the process is more difficult because there is more bureaucracy.

- In the air company Vueling/ Iberia, there are numerous known cases that delivered both applications and received the payment took three years. An example was the one that happens with the flight IB 8582⁹, a flight that was cancelled and a bus was offered as a way of transport, but without providing the passengers with foods, nor call as the right that they have. In that moment the complaint was put. On 8 of September, Iberia answer them alleging that it was caused by an airspace congestion that caused cancellations and asked them to make available the official ticket to the office where the ticket was bought. As the ticket was bought in the web, they were remitted to a telephone number that cost 30 cents per minute. As the client did not consider that what Iberia said was an extraordinary cause, he continued claiming the 250 Euros, the cost of dinner and the taxi that he used in Zaragoza because he arrived to late to take public transport. Until 28 January of 2008 the passenger made more than five reclamations and Iberia answered that day that it had happened by an unexpected breakdown, cause that can be classified as extraordinary. Nevertheless Iberia asked him to send a "reasonable valuation" of expenses, the original ticket and ID, the client did not know how send the documents because it was not possible answer the e-mail and in the web does not exist the possibility to attach files. On 11 April 2008, the passenger filed a complaint with the Office of the O.M.I.C (consumer protection) in Vigo, the Ministry of Development, Agency of Safety State Aviation answered early in September 2010. These had requested a report to Iberia, whose answer was that the cancellation was due to a delay of scales above (new case), as the ministry did not accept it as an extraordinary, the client had rights to everything previously claimed. But few days later, Iberia sent them a check, without having time to present bills of food and taxi.
- A recent case of a known, an Iberia's flight two months ago from Barcelona to Bilbao was cancelled at eight o'clock for "operational reasons". They were relocated in a flight that departure at 2pm, it means more than 6 hours late. During this time, Iberia gave them a voucher for lunch during wait time. They made the respective red tape at the airport and on Internet (as was

⁹ A flight from Madrid to Zaragoza on 9th of August 2007

recommended by the airport staff) and nowadays still have not gotten any answer.

But, if European passengers have a law that gives them rights, why they do not still reclaim them? According to an interview published by "Economista.es" to the responsible of "www.reclamador.es" (a web page that manage the complaints for passengers about delays, cancellations or overbookings in Spain), if all passengers affected, demand airlines. They will have to pay around a thousand millions Euros per year. According them, the reason for that only a small part of passengers claim is for lack of awareness of rights and fear of being immersed in a long, tedious and fruitless in a bureaucratic procedure.

Now, we know that passengers' rights and duties are the same in the majority of the states in the world, but not the amount of compensation and assistance right. The regulation nº261/2004 must be extended to the countries members of the European Union, but also for the flights that depart from a member country and those who leave a not member country but set off to an airport of an state member, anyway the airline belongs to a European state member.

Airlines based outside the European Union are exempt from community regulation. If someone flies from Madrid to New York there is no difference if he or she does with Iberia or American Airlines, because both are going to obey European legislation. The problem is for the return flight (New York- Madrid), for Iberia prevail the European law, but not for American Airlines, who applies the regulation from the country of origin. In that case United States, which has not the same regulation of consumer protection than the European one.

The regulation is applicable to all the airlines that fly in members' states but every country has to supervise that airlines accomplish the law. Moreover, every state has to designate an organization to carry out the function of safeguarding the interests of passengers. Supervision cannot affect passengers and carriers' rights to get reparation through the courts under procedures of national law. In addition, this administration should establish set of rules on penalties applicable to the regulation. To guarantee the application of the normative, it has to be obeyed by any air carrier that has scheduled a flight, with an aircraft owned, leased, with or without crew or under any form. But, what happens in a flight from London to Chicago that was delayed more than eight hours? On 17th August, 2009 Gennadiy Volodarsiy, his wife and their two minor children had a flight from London to Chicago with Delta Airlines and on 29th November, 2010 the flight of Richard Cohen and his wife, which went from Paris to Philadelphia, were cancelled three hours later than the scheduled departure and arrived at the final destination more than 24 hours later in that case, they have the right to be compensated with 600 Euros for the delayed and to be assisted during the delay. In 2011both marriages denounced together Delta Airlines in the Northern District of Illinois. The judge establishes that the regulation 261 does not provide any type of right that enforce courts outside EU. So, the judge did not want to solve. Moreover, Delta airline is an American airline, so it does not have the obligation to compensate or assist passengers under the European regulation 261/2004.

As the majority of states that take part in the European Union and United States of America are protected under the Montreal Convention, airlines have the same minimum obligations to protect the passengers' rights. It seems that in both cases, the passengers are very protected by the government, who

establishes duties for airlines who transport them and economics compensations for long delays, denied boarding or cancellations in flights, but the reality is different, European sentences show us that the passengers usually have won them, but in Americans' cases the airlines seem to be more protected, as the case of *Ray Vs American Airlines*¹⁰. When the regulation is not clear, as the extraordinary circumstances, the judge investigates and gives a clear reason to solve the case law, as *Wallentin Hermann* case¹¹ or in the case of the eruption of Iceland volcano, *Eyjafjallajökull*¹², which is included in an extraordinary circumstance, it happened in 2010, when nearly 100.000 flights were cancelled (nearly 10.000 were Ryanair's flights). Ms McDonagh had to spend 1129 Euros in accommodation and food and beverage, her ticket's price only costs 98 Euros, so she denounced the airline and the Court decided that the airline had to pay it. When it happens in America, the judge determines just that he cannot solve it, so the winner is the airline, because it has not to pay. From September 11th, 2001 many rights and obligations of the passengers have been changing around the world. If some years ago it was unthinkable that passengers had to remove their shoes, take off their clothes, put their electronic devices in a separate tray or get rid of an object due it is banned its transport however small was (as a nail clipper, scissors or any sharp object) in their hand luggage, now it is an obligation for all the passengers, almost around the world. One of the most important obligations for passengers and that has caused a stir when it was implemented, was the prohibition of transport a higher quantity of 100cc of liquids in the hand luggage, and this must be transported in a sealed and transparent sack.

Nowadays, the security to access to the United States remains higher than the existed in Europe, or at least among member countries. Since they give you equal treatment indifferently the country from which you are from, this is a result for the free movement of people in Europe. This fact has been questioned during the last years and more in recent months, even question if the terrorists of Paris' attacks had entered in Europe as refugees and then moved freely. During the terrorism attacks in Paris, 137 people died and 415 were injured and at least one of the terrorists was able to escape to Belgium. Governments ask to the European union to rescind the entrance to their countries for people coming from the Holy War or that it exists reasons to believe that he is a terrorist, with the purpose to protect their citizens. This goes against the current legislation, since there are not controls at internal borders for everyone. In addition, people from other countries, which are not members of European Union, only need a visa and then can move around all member countries, so once they step in a member country, it is very difficult to track¹³. But, due the massive influx of refugees, many states have reintroduced inside border controls.

Although the terrorist attack in Belgium is much more recent and has not been so many victims as 11-S, they have already been placed new and relevant safety measures to avoid such incidents. As it has been explained before, one

¹⁰ 609 F.3d 917

¹¹ C-549/07

¹² Case C-12/11

¹³ Directive 2004/38/ CE

of the changes in legislation was the new regulation in the members' states of European Union to prevent terrorism, which was adopted on April 14th, 2016, as a response of Belgium and Paris attacks¹⁴. This project began in 2011, but it was slowly due it could be seen as a restriction of freedom of movement within the European territory, especially by the invasion of privacy that involves the collection and storage the passengers' personal data. This legislation includes a safeguard and will be exclusively provided if it is required in serious problems as terrorism. In addition, the security checks have been increased during the first few weeks in almost all airports in Europe, especially those in Belgium and France. The authorities recommended passengers to go up to three hours before the departure flights, instead of two as usually is advisable. This measure was because there were exhaustive security checks and the registration of passengers and baggage. Moreover random passengers were selected and policy makes controls of explosives to them and their luggage. These measures were already taken in United States during 11-s and in France on November 13th, 2015. In order to guarantee the highest level of air safety for European citizens and passengers, there are a list of 308 airlines, of 21 countries, that are not allow flying in European's territory or having numerous restrictions, as Afghanistan, Libya or Nepal. To choose if an airline is dangerous, they study a verified evidence of serious deficiencies, persistent ineffectiveness in the implementation of community or international rules, or lack of "ability or willingness" to solve these problems.

It will be in the next months and even years when we can see how regulations of passengers' obligations or rights change as a result of current occurrences. Although these regulations are included in passengers' obligations, what can carry or not on the plane, it is a direct consequence of their rights, as to ensure their safety and prevent that this disasters happen again passengers should be monitored.

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¹⁴ Passenger Name Record Data

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