

LEGAL (NON)COMPLIANCE OF TAXI TRANSPORT IN THE REPUBLIC OF CROATIA WITH MODERN INTERNATIONAL AND EUROPEAN SOLUTIONS¹

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Abstract

In order for transport to function adequately, existing legislation needs to be harmonised and adapted. The Road Transport Act of the Republic of Croatia, with its 2018 amendments, introduced important innovations in the regulation of contracts for transport in domestic road transport, which leads to significant difficulties in the conduct of modern public passenger transport. It was expected that the amendments to this Act would finally and adequately solve the problems related to road transport contracts, which both theory and practice have been warning about for many years. However, again an appropriate solution was not put forward, so Croatian regulation led to noncompliance with international treaties and modern European solutions. Taxi transport as a part of public transport is therefore not adequately regulated. The aim of the amendments to the Road Transport Act was to liberalise the taxi market and facilitate the use of this service, but there were also some negative consequences. In our opinion, the amendments to the provisions on road transport contracts have brought legal uncertainty and made it more difficult to exercise the rights under the transport contract. The paper analyses the changes in Croatian regulations, compares them with the provisions of international conventions and presents the case law of the European Court related to changes to the regulations of passenger transport by taxi. Solutions to the problem of legal regulation of road transport contracts in the Republic of Croatia are proposed at the end of the paper.

Keywords: *contract of carriage in road transport, taxi transport, legal regulation, transport law, Road Transport Act of the Republic of Croatia, characteristics of the contract, formal form of contract, practical problems.*

JEL Classification: K12

1. Introduction

The modern development of transport law strives for the harmonisation of regulations within each transport mode, but also between different transport modes, both at the national and international level. Unification of transport law arises from the increasingly pronounced international character of all transport modes and is achieved through the adoption of unification documents - international treaties (conventions, agreements).⁵ The Republic of Croatia is a party to the most important international agreements regulating transport law. However, the Croatian national legislation that regulates road transport, i.e. road transport contracts, does not follow the solutions of international agreements; quite on the contrary, it brings non-traditional and completely opposite solutions.

In the Republic of Croatia, transport contracts are regulated by the Civil Obligations Act,⁶ i.e. within the framework of civil law. However, for certain branches of transport law, there are also *leges speciales* that, *inter alia*, regulate transport contracts in the given mode of transport.

Until 2018, only the aforementioned Civil Obligations Act was applied to road transport contracts as *lex generali*, since, as already mentioned, the Road Transport Act did not contain

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⁵ Vasilj, Aleksandra; Činčurak Erceg, Biljana, *Prometno pravo i osiguranje*, Sveučilište Josipa Jurja Strossmayera u Osijeku, Pravni fakultet Osijek, Osijek, 2016, p. 68. See also: Radionov Radenković, Nikoleta, *Ugovor o prijevozu prema ZOO 2005: pozadina izmjena in: "Liber amicorum Nikola Gavella: Građansko pravo u razvoju,"* Gliha, I.; Josipović, T.; Belaj, V.; Baretić, M.; Nikšić, S.; Ernst, H.; Kegelević; Matanovac, R., (eds.), Zagreb, Pravni fakultet Sveučilišta u Zagrebu, 2007, pp. 659-683.

⁶ *Zakon o obveznim odnosima*, Official Gazette, Nos. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018.

provisions relating to road transport contracts. Such a situation has justifiably been criticised not only in scientific and professional papers but also in practice.⁷ In 2018, amendments to the Road Transport Act were passed, which contains one article (yes, only one, i.e. Article 97) that regulates road transport contracts. Although such a solution has been advocated for years, i.e. that road transport related contracts should be regulated within the framework of *legis specialis*, both science and practice have been surprised by the content of the said Article 97. Namely, pursuant to this article, from the generally accepted solution according to which such contracts are informal, road transport contracts have become formal. Such a solution was justifiably criticised, and the hope for improving the situation was raised by the amendment to the Road Transport Act of 2021; however, Article 97 was not amended.

This solution brings a number of problems, which will be discussed later in the paper. It will negatively affect all types of road transport contracts, and in this paper, we will look at contracts related to passenger transport by taxi, which has also undergone significant changes in recent years. Given the current practice of concluding contracts for the transport of passengers in an informal manner, we will try to answer the question as to how the legal solution governing road transport contracts will formally affect future operations of carriers, the validity of contracts and the protection of passenger rights to which they are entitled pursuant to the transport contract.

2. Road transport contracts in Croatian law

In the period from 1991 to 1998, there was no *lex specialis* in the Republic of Croatia related to road transport, which was not taken over from the former Yugoslavia due to a technical error.⁸ This error was corrected in 1998 when the Road Transport Act was passed,⁹ which also regulated contracts governing the transport of goods, passengers and luggage in domestic transport. The provisions relating to contracts were “substantially mostly taken over from the Road Transport Contract Act of the former Yugoslavia of 1974 and were necessarily obsolete and inappropriate to modern transport legislation.”¹⁰ Therefore, in 1998, the legislator also failed to harmonise road transport contracts with the solutions of international contracts - Convention on the Contract for the International Carriage of Passengers and Luggage by Road¹¹ (hereinafter: CVR) of 1973 and the Convention on the Contract for the International Carriage of Goods by Road¹² (hereinafter: CMR) of 1956. However, the provisions on contracts in the 1998 Road Transport Act were repealed by new amendments to that act in 2002,¹³ “in the context of alleged harmonisation with EU law.”¹⁴ Such a situation has led to the application of the Civil Obligations Act to domestic road transport contracts.

The Civil Obligations Act divides transport contracts into a contract of carriage of persons and a contract of carriage of goods. Pursuant to Article 661(1) of the Civil Obligations Act, the carrier

⁷ Radionov Radenković, for example, states that the Civil Obligations Act is not an adequate source of law for transport, because it does not provide the level of protection of the interests of carriers that they traditionally enjoy pursuant to transport regulations. Radionov Radenković, Nikoleta, Tržište usluga prijevoza robe cestom u Hrvatskoj: Vode li ceste u EU?, Zbornik Pravnog fakulteta u Zagrebu, Vol. 56, Supplement, 2006, p. 575.

⁸ For more details, see: Radionov Radenković, Nikoleta, Zašto Hrvatska (više) nema propis o ugovorima o prijevozu cestom?, Hrvatska pravna revija, No. 6/2006, pp. 44-51.

⁹ Zakon o prijevozu u cestovnom prometu, Official Gazette, No. 36/1998.

¹⁰ Radionov Radenković, Nikoleta, Tržište usluga prijevoza robe cestom u Hrvatskoj: Vode li ceste u EU?, Zbornik Pravnog fakulteta u Zagrebu, Vol. 56, Supplement, 2006, pp. 571-573.

¹¹ United Nations, Treaty Series, vol. 1774, p. 109, <https://treaties.un.org/doc/Publication/UNTS/Volume%201774/v1774.pdf>, Accessed 12 April 2021.

¹² United Nations, Treaty Series, vol. 399, p. 189. <https://treaties.un.org/doc/Publication/UNTS/Volume%20399/v399.pdf>, Accessed 12 April 2021.

¹³ Zakon o izmjenama i dopunama Zakona o prijevozu u cestovnom prometu, Official Gazette, No. 83/2002.

¹⁴ Radionov Radenković, Nikoleta, Ugovor o prijevozu prema ZOO 2005: pozadina izmjena in: “Liber amicorum Nikola Gavella: Građansko pravo u razvoju”, Gliha, I.; Josipović, T.; Belaj, V.; Baretić, M.; Nikšić, S.; Ernst, H.; Keglević; Matanovac, R., (eds.), Zagreb, Pravni fakultet Sveučilišta u Zagrebu, 2007. As Radionov explains, “EU secondary legislation does not regulate the issue of substantive road law at all, but it is regulated by the national laws of the EU Member States.” For more details, see also: Radionov Radenković, Nikoleta, Tržište usluga prijevoza robe cestom u Hrvatskoj: Vode li ceste u EU?, Zbornik Pravnog fakulteta u Zagrebu, Vol. 56, Supplement, 2006, pp. 575-576.

undertakes to transport a person or goods to a certain place by a contract of carriage, and the passenger or sender undertakes to pay a charge to the carrier. Hence, according to its characteristics, it is a nominate, consensual, reciprocal, onerous and informal contract. Gorenc explains that according to the Civil Obligations Act, the carrier is obliged to enter into a contract for the transport of persons if there are empty seats on the transport vehicle. It is concluded by consensus of both parties by purchasing a ticket. A transport contract is an adhesion contract. The carrier is obliged to issue a ticket to the passenger, which is considered to be the identifying travel document. It is therefore a means of proof that the contract has been concluded, but the existence of the contract can also be proved in another way.¹⁵

Let us also look at the provisions of the CVR Convention.¹⁶ It does not contain provisions on the legal nature and form of the contract but links its application to the existence of a contract of carriage (Article 1). Article 5 of the CVR stipulates that the carrier shall issue an individual or a collective ticket,¹⁷ but if the passenger does not have a ticket, and if the ticket is defective or lost, this “shall not affect the existence or the validity of the contract of carriage, which shall remain subject to the provisions of this Convention.” Pursuant to Article 6, the CVR ticket is “*prima facie* evidence of the particulars shown on it.”

When it comes to European Union legislation, transport contracts are not within its jurisdiction.¹⁸ However, as an important source, especially when it comes to the protection of passenger rights, we will mention Regulation (EU) No. 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport.¹⁹ As provided for in Article 2(1), this regulation applies to “passengers travelling with regular services for non-specified categories of passengers where the boarding or the alighting point of the passengers is situated in the territory of a Member State and where the scheduled distance of the service is 250 km or more.” Regulation (EU) No. 181/2011 defines ‘transport contract’ in its article 3, point c, as “a contract of carriage between a carrier and a passenger for the provision of one or more regular or occasional services”, while ‘ticket’ means “a valid document or other evidence of a transport contract.”²⁰ Regulation (EU) No. 181/2011 does not provide for a formal form of a contract for the carriage of passengers.

After the amendments in 2002, the Road Transport Act was also amended in 2004, 2005, 2006, 2008, 2009, 2010 and 2013. As already mentioned, amendments to the Road Transport Act of 2018 regulate road transport contracts.²¹ In Article 97(2), the Road Transport Act stipulates that the provisions of the Act governing the basic principles of civil obligations, and the provisions of international agreements and conventions to which the Republic of Croatia is a signatory, shall apply appropriately to the rights and obligations of the contracting parties to road transport contracts that arise from the performance of passenger and freight road transport and from the performance of other

¹⁵ Vilim (ed.), authors: Česić, Zlatko; Gorenc, Vilim; Kačer, Hrvoje; Momčinović, Hrvoje; Pavić, Drago; Perkušić, Ante; Slakoper, Zvonimir; Vukmir, Branko; Vidović, Ante, Komentar Zakona o obveznim odnosima, RRIF, Zagreb, 2005, p. 1036.

¹⁶ Pursuant to its Article 1(1), the CVR “shall apply to every contract for the carriage of passengers and, where appropriate, of their luggage in vehicles by road when the contract provides that the carriage shall take place in the territory of more than one State and that the place of departure or the place of destination, or both these places, shall be situated on the territory of a Contracting State, irrespective of the place of residence and the nationality of the Parties.”

¹⁷ Pursuant to Article 5(2), the ticket contains the name and address of the carrier and a note that the provisions of the CVR are applicable to the contract.

¹⁸ For more details, see: Radionov, Nikoleta; Čapeta, Tamara; Marin, Jasenko; Bulum, Božena; Kumpan, Ana; Popović, Nikola; Savić, Iva, *Europsko prometno pravo*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2011, pp. 16-18.

¹⁹ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No. 2006/2004 Text with EEA relevance. OJ L 55, 28.2.2011, pp. 1-12.

²⁰ *Ibid.*, Art. 3, point d.

²¹ Pursuant to Article 97(1) of the Road Transport Act, the following contracts are considered to be road transport contracts: a contract for regular public passenger transport in community transport, a contract for passenger transport as a public service, a contract for regular and special passenger transport, a contract for passenger shuttle service, a contract for occasional passenger transport, a contract for a special form of passenger transport, a contract for micro-transport, a contract of carriage of goods, a contract for the provision of agency services in road transport, a contract for the provision of station support services, a contract for the sale of bus tickets, a contract for integrated passenger transport, and other contracts regulating rights and obligations of the carrier and the contracting entity or other contracting parties.

activities regulated by this Act. Therefore, in terms of all issues not regulated by Article 97 of the Road Transport Act, the provisions of the Civil Obligations Act and the provisions of the CVR and CMR conventions shall continue to apply to transport contracts and to international transport contracts, respectively. In this way, the *lex specialis* (the Road Transport Act) refers to the subordinate application of the *legis generalis* (the Civil Obligations Act).

The biggest changes were made to paragraph 3, which stipulates that road transport contracts shall be concluded in writing,²² must be kept in the business premises of the contracting parties and must be made available to the road traffic inspector at his/her request. In this way, a road transport contract in Croatian law is no longer informal in its form, as is customary in international conventions and in comparative law, but it has become formal.

Therefore, according to the Road Transport Act and pursuant to Article 97, a contract concluded in writing shall be valid, for which a document containing the least objectively essential elements of a legal transaction has been both drawn up and signed by the parties. A signed document is traditionally considered to be a document in written form with a handwritten signature, but today a document in electronic form with a qualified electronic signature will be equated thereto.²³

This means that a road transport contract, if not concluded in writing, is null.²⁴ In practice, this means that most road passenger transport contracts will be null. This further raises problems with the liability of the carrier as the carrier would be liable on a non-contractual basis in the event of the nullity of the contract. Therefore, the carrier will not be subjected to limited but unlimited liability for the full amount of damages. This solution certainly benefits the passenger, as the carrier will be held liable not for a limited but for the total amount of damages.

In this way, a formal form of the passenger road transport contract is prescribed for the first time in Croatian legislation. In practice, there will certainly be many problems, especially in public transport, where transport contracts are concluded informally by buying a ticket that is already printed as a standard form, or in 'classic' taxi transport, where contracts are also concluded informally by entering the vehicle. The use of various taxi mobile applications in principle does not contain all the necessary legal requirements required for such a formal contract (i.e. the customer name, the carrier name, the route, the taxi fare and the payment deadline), which will be discussed in more detail in the paper.

3. Passenger transport by taxi

Passenger transport by taxi is regulated in the Republic of Croatia by the Road Transport Act, in which these provisions have also been amended several times. Pursuant to Article 31 of the Road Transport Act, this is a type of public passenger transport in domestic road transport. Domestic road transport of passengers by taxi is performed on the basis of a licence for passenger transport by taxi and a permit for passenger transport by taxi, as provided for in Article 47(1).

According to the legally valid definition from Article 4, point (1) of the Road Transport Act, "*passenger transport by taxi* is a public passenger transport activity performed by a vehicle of category M1, when one passenger or a group of connected passengers embarks in one or more places and disembarks in only one other place, and when such transport is performed on the basis of one order and the total transportation cost specified by a taximeter or an electronic application, which shows to the passenger the maximum taxi fare and the route planned according to preset conditions,

²² In Article 97(6), it is reiterated that the contracting entity and the carrier are obliged to conclude a written transport contract for each transport operation, which will, in accordance with paragraph 4, contain the name of the contracting entity, the name of the carrier, the route, the fare and the payment deadline. As prescribed in paragraph 5, the payment of transport services shall be made within 30 days from the transport service invoice date, and in any case in the period not exceeding 60 days after the day on which the transport service was provided.

²³ Radionov, Nikoleta, Obvezan pisani oblik ugovora o cestovnom prijevozu prema Zakonu o prijevozu u cestovnom prometu iz 2018. godine, Transporter, No. 3/2021, p. 6.

²⁴ In addition to nullity, non-compliance with the provision on the written form of the transport contract entails misdemeanour liability. Namely, pursuant to Article 113(1)(32), if the carrier and the contracting entity do not enter into a written transport contract in accordance with Article 97(3) and (4), this is considered a serious misdemeanour of legal entities and natural persons, i.e. craftsmen.

is paid only once, where a taxi is ordered by a phone call, via an online application or by contacting the driver directly, and which does not have the characteristics of any other mode of passenger transport.” It can be seen that the legislator has recognised new modes of public passenger transport services in road transport that have emerged in recent years and are based on technological progress of mobile platforms.

In order for transport to function satisfactorily, existing legislation needs to be harmonised and adapted. We have already emphasised that the 2018 amendments to the Road Transport Act have caused significant difficulties in the conduct of modern public passenger transport, although it was expected that they should finally and adequately address this issue. As part of public transport, transport of passengers by taxi is not properly regulated either. The 2018 amendments to the Road Transport Act significantly changed the provisions on transport of passengers by taxi compared to those that had existed since 2013. On the one hand, the mentioned changes introduced a number of innovations aimed at liberalising the taxi market and facilitating the use of this service, and on the other hand, they brought legal uncertainty and made it more difficult to exercise the rights from the transport contract, which will be discussed in more detail in the paper.

3.1. Legal regulation of passenger transport and the problems of the ‘old’ Road Transport Act of 2013

The legal solution related to passenger transport until 2018 did not provide for the regulation of passenger transport ordered and paid for by a mobile application. Transport has once again become a sector in which technological advances have led to the emergence of new transport service providers in collision with transport of passengers by taxi. Due to their flexibility in providing transport services, the new platforms have begun to gain popularity in relation to classic taxi services and dominate both the world and Croatian markets by their competitive prices. Shortcomings also existed at the level of the European Union, where there was also a need to regulate the work of new stakeholders in passenger transport.

In 2017, the Ministry of the Sea, Transport and Infrastructure of the Republic of Croatia (hereinafter: the Ministry) began work on radical changes to the old Road Transport Act, which was in force since 1 July 2013,²⁵ *inter alia*, due to changes in the market of road transport of goods and passengers that occurred as a consequence of new trends in transport processes and the emergence of new modes of transport.²⁶ The then unsettled situation on the transport market was pointed out as an argument, primarily in relation to the provision of taxi transport services, as well as dissatisfaction of stakeholders on the transport market with the current situation.²⁷ The competent Ministry noticed the problem of strengthening unfair competition to classic stakeholders in the taxi business and an insufficiently regulated road transport market. The new act also aimed at increasing the possibility of creating new jobs in the road transport sector and ensuring a level playing field and free competition.

Following the above, on 14 May 2018, the ‘new’ Road Transport Act entered into force, with substantially amended legal provisions concerning passenger transport,²⁸ which have already been discussed. The most important change in passenger transport is the final legal regulation of new models of taxi booking and paying for transport services via mobile applications, with Uber as the most represented company in the Republic of Croatia and its application. Until the adoption of the current legal solution, the Uber business model caused resistance from taxi operators and resulted in millions of fines on Uber drivers by the traffic inspectorate as well as a criminal charge filed by the

²⁵ Zakon o prijevozu u cestovnom prometu, Official Gazette, No. 82/2013.

²⁶ Regulation impact statement form, Ministry of the Sea, Transport and Infrastructure of the Republic of Croatia, E-consultation on the draft proposal of the Road Transport Act of 1 December 2017, available at: <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=6492>, accessed 20 January 2020.

²⁷ *Ibid.*

²⁸ Zakon o prijevozu u cestovnom prometu, Official Gazette, Nos. 41/2018, 98/2019, 30/2021.

Croatian Chamber of Trades and Crafts in 2017 “for encouraging illegal passenger transport.”²⁹ Namely, the Croatian Chamber of Trades and Crafts defended its members, which consequently aroused public interest in this topic, and led to a change in the Act itself. Although the now regulated mobile transport market is expanding, Uber remains a symbol of change and adaptation of the Croatian market to new global trends, which is why we will briefly look at its business in the Republic of Croatia.

3.2. The arrival of Uber in the Republic of Croatia and the problem of legal regulation

Although there are now several companies in the Republic of Croatia that deal with passenger transport pursuant to the Road Transport Act of 2018 according to the model of individual drivers-craftsmen using the same platform, e.g. Bolt, Uber was the first service of its kind to appear on the Croatian market that soon surpassed the number of classic taxi drivers in terms of the total number of drivers. According to their sources, there are just over 2,000 taxi drivers and around 4,000 drivers using the Uber platform,³⁰ and the company expects these figures to grow.

The advantage of the platform and the reason for its explosive growth is related to the fact that Uber, as an IT platform provider, serves to connect drivers and passengers, while collecting part of their earnings as its own. As a digital platform, Uber connects service providers and users on an on-demand basis via the application.³¹ For the end user, it is a flexible approach through which a ride can be requested through a free mobile application with a price known in advance and the current position of the vehicle coming, while a bonus for drivers are flexible working hours and avoidance of legal regulations relating to professional taxi drivers. The mobile platform further offers mutual evaluation of passengers and drivers, which makes it easier for the end user to easily select a driver and the desired level of service. In this way, Uber also delegates the function of control over its drivers to customers in order to further distance itself from liability for the service provided and the employment status of its drivers.³² Since as a platform Uber prefers to be registered only as an electronic service provider rather than as a passenger transport service provider, there have been legal problems in regulating such a service in relation to the taxi market. This has ultimately resulted in changes on the part of the legal regulations of the cities or countries in which Uber operates, but also, as will be seen below, in changes in the business model of the company itself. Uber must now use only licenced drivers in the Republic of Croatia and meet all the conditions that taxi drivers must meet if they want to continue their business operations in accordance with the law.

The company has been operating in Croatia since October 2015, when on the basis of the old decision it was registered for computer and related activities, buying and selling goods and, among other things, providing services in trade, but not taxi or passenger transport services,³³ to the great dissatisfaction of taxi carriers who considered them illegal competition because in this way they avoided the necessity of possessing licences and permits. It is interesting that the Uber branch in Croatia is registered with the Court Register of the Commercial Court in Zagreb with only HRK 20,000 of the required start-up capital under the name “Uber Croatia LLC for promotion and

²⁹ The Croatian Chamber of Trades and Crafts stated that individuals who provide transport services based on the Uber application carry out transport without a taxi permit, without a licence, without a city knowledge exam, without a driver qualification, without a fixed rate charged for a transport service, and passenger safety is also questionable. HINA, HOK tuži Uber: 'Krše toliko zakona da bi mogli napisati knjigu', <https://www.tportal.hr/biznis/clanak/hok-tuzi-uber-krse-toliko-zakona-da-bi-mogli-napisati-knjigu-20170201/print>, Accessed 20 January 2020.

³⁰ Hrvatska danas, Konkurencija i tržište: Vozači Uberu otkazuju vožnje kako bi mogli voziti za Bolt, <https://hrvatska-danas.com/2019/06/03/konkurencija-i-trziste-vozaci-uberu-otkazuju-voznje-kako-bi-mogli-voziti-za-bolt/>, Accessed 20 January 2020. However, the official number of workers working for Uber and Bolt, as well as the number of other workers working through the platform, is unknown. Galić, Gabrijela, Platformski rad u Hrvatskoj regulirat će se izmjenama Zakona o radu, <https://faktograf.hr/2021/02/11/hrvatska-platformski-rad-uber-wolt-zakon/>, Accessed 12 April 2020.

³¹ Bjelinski Radić, Iva, Novi oblici rada kao suvremeni izazov za radno pravo – slučaj Uber, Zbornik Pravnog fakulteta Sveučilišta rijeka, Vol. 38, No. 2/2017, p. 885.

³² *Ibid.*, p. 899.

³³ Data for entry into the general ledger of the Court Register, case No. Tt-15/29283-3 of the Commercial Court in Zagreb dated 15 October 2015.

professional support services” and seated in Zagreb,³⁴ and, as the name suggests, it only promotes the services, while the entire financial business operation for the whole Europe goes through the headquarters of Uber International Holding BV seated in the Netherlands, with which all drivers in Croatia sign a contract.

3.3. Case law of the European Union

The previously described problems in the Republic of Croatia have also appeared in other EU Member States, which has led to solving the problem of Uber’s status at the level of the European Union. According to the judgment of the Court of Justice of the European Union of 20 December 2017,³⁵ Uber is a transport service provider. Resolving in the preliminary issue requested by the Commercial Court No. 3 in Barcelona,³⁶ the Court stated that here “passengers are transported by non-professional drivers using their own vehicle, the provider of that intermediation service simultaneously offers urban transport services, which it renders accessible, in particular, through software tools such as the application at issue in the main proceedings and whose general operation it organises for the benefit of persons who wish to accept that offer in order to make an urban journey.”³⁷ For this reason, the Court concludes that Uber cannot be considered solely an information society service provider as requested by Uber in its defence in Barcelona. The Court found the reasons for such a decision in the fact that Uber exercises decisive influence over the choice of drivers and the fare charged from the customer before giving a share to the driver.³⁸ The Court believes that “that intermediation service must thus be regarded as forming an integral part of an overall service whose main component is a transport service and, accordingly, must be classified not as ‘an information society service’.”³⁹ The Court concludes that it is up to the Member States to regulate the conditions for the provision of mediation services since the European Parliament and the Council of the European Union have not adopted common rules or other measures on the basis of Article 91(1) of the TFEU.⁴⁰

This ruling was the impetus for change in contracting regulations in the digital economy. It specifies the rules that apply to online platforms that serve as a link between the parties seeking and those providing the service,⁴¹ which forced Uber to adapt its business plan in the EU to the new framework, including Croatian legislation on the territory of Republic of Croatia. The current legal consequence of Uber’s decisive influence is that their business model of ‘intermediation plus control’ is seen as one overall service.⁴² Hence Uber cannot be considered only as a service provider covered by the Directive on electronic commerce (Directive 2000/31/EC),⁴³ as it is a necessary part of the entire service and the provision of a transport service. In this way, companies like Uber are separated

³⁴ Republic of Croatia, Court Register, https://sudreg.pravosudje.hr/registar/f?p=150:28:0::NO:28:P28_SBT_MBS:080993694, Accessed 12 April 2020.

³⁵ Judgment of the Court (Grand Chamber) of 20 December 2017, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL.*, Case C-434/15.

³⁶ The first question was if the activity must be carried out for profit by Uber, consisting of acting as an intermediary between the owner of a vehicle and a person who needs to make a journey within a city, by managing the IT resources — “smartphone and technological platform” interface and software application — which enable them to connect with one another, be considered to be merely a transport service or if it must be considered to be an electronic intermediary service or an information society service, as defined by Article 1(2) of Directive 98/34 of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18).

³⁷ *Ibid.*, para. 38.

³⁸ *Ibid.*, para. 39.

³⁹ *Ibid.*, para. 40.

⁴⁰ *Ibid.*, para. 46.

⁴¹ Hacker, Philipp, *UberPop, UberBlack, and the regulation of digital platforms after the Asociación Profesional Elite Taxi judgment of the CJEU: judgment of the Court (Grand Chamber) 20 December 2017, Asociación Profesional Elite Taxi (C-434/15)*, *European Review of Contract Law (ERCL)*, De Gruyter, Berlin, Vol. 14, Iss. 1/2018, pp. 80-96, available at: <http://hdl.handle.net/10419/195928>.

⁴² *Ibid.*, p. 84.

⁴³ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’), OJ L 178, 17. 7. 2000, pp. 1–16.

from pure intermediaries between a customer and a service provider like eBay, which are fully subject to e-commerce rules.

The Road Transport Act of 2018 has therefore undergone key changes compared to the 2013 Act in order to include such service providers in the passenger transport sector, as will be seen in the next chapter.

3.4. Changes to the provisions on passenger transport by taxi in the Road Transport Act of 2018

The most important changes brought by the Road Transport Act of 2018 in relation to the previous legal solution can be divided as follows:

- a) changes to the legal definition of passenger transport by taxi,
- b) changes to driver obligations,
- c) changes to vehicle requirements and the necessary documents in the vehicle,
- d) changes to taxi permits issued by local self-government units,
- e) changes related to transport contracts.

Comparing the solutions of 2013 and 2018, the most visible changes are changes to the legal text with the aim of modernising taxi services in line with the new models based on digital technologies. The taximeter, as the only clear indicator that this is a taxi vehicle, has fallen into disuse as such, and in 2018 the Act introduced alternatives equated with it.

3.4.1. Changes to the legal definition of passenger transport by taxi

Before the enactment of the Road Transport Act in 2018, passenger transport by taxi was defined as “a passenger transport activity performed by a car, when one passenger or a group of passengers embarks in one place and when such transport is performed on the basis of one order with a taxi fare paid only once.”⁴⁴ This definition has been significantly changed and expanded in the new legal solution of 2018 (Article 4, point 1) to include new service providers via mobile applications, which has already been discussed.

Apart from defining the category of vehicles more precisely in accordance with the Ordinance on technical requirements of road transport vehicles, where a vehicle of category M1 is defined as a motor vehicle used for the carriage of passengers, comprising not more than 8 seats in addition to the driver’s seat,⁴⁵ the legal definition is significantly expanded and more flexible in relation to the previous legal solution.

Namely, now the ride of a connected group of passengers can start in several places, and the fare charged on the basis of a taximeter or via an electronic application with important information visible in advance is explicitly mentioned. It is also specified that a taxi can be ordered not only by a classic phone call or from the driver but also via an electronic application. This has put business operations of companies like Uber in the legal framework under the same conditions as the previous passenger transport by taxi. Slightly unusual in relation to solutions in other countries, in this way Uber drivers in the Republic of Croatia were also required to display a sign on the roof of the vehicle with the word Taxi and a Taxi sticker on the side of the vehicle,⁴⁶ because they are engaged in passenger transport by taxi with the same obligations as other providers of the same service. In addition to bringing order to the market, this legal provision also made it possible to avoid a privileged status of any of the stakeholders, while significantly simplifying the drafting of an act that does not require two separate chapters of similar provisions if somehow transport by taxi ordered via electronic applications was singled out from the above definition.

⁴⁴ Zakon o prijevozu u cestovnom prometu, Official Gazette, No. 82/2013, Art. 4, point 1.

⁴⁵ Pravilnik o tehničkim uvjetima vozila u prometu na cestama, Official Gazette, Nos. 85/2016, 24/2017, 70/2019, Art. 5.

⁴⁶ Pravilnik o posebnim uvjetima za vozila kojima se obavlja javni cestovni prijevoz i prijevoz za vlastite potrebe, Official Gazette, Nos. 50/2018, 56/2019, 107/2020, Art. 3.

Furthermore, in order to avoid possible confusion of hiring a vehicle with a driver⁴⁷ and a new definition of passenger transport by taxi, the Road Transport Act of 2018 provides in the same article that definition which did not exist in the previous act. In this way, hiring a taxi via an electronic application cannot be considered a hiring service according to the provisions of the Act, because a written contract, time- and not route-based calculation, and non-cash transactions are explicitly required for the hiring service. Also, hiring vehicles with a driver cannot have more than four seats, while taxi vehicles can have up to eight passenger seats. This makes the legal definition sufficiently clear to avoid mixing the two different services.

3.4.2. Changes to driver obligations

As to their professional qualification, drivers need to have the initial qualification issued according to a special programme for category B drivers (Article 5(2)). The initial qualification consists of a theory test assessing driver's theoretical knowledge of road rules. After passing the test, a certificate of professional competence is issued certifying the initial qualification.⁴⁸ This now includes drivers linked to mobile platforms such as Uber. The changes are most noticeable in the formation of the Register of Professional Drivers and the obligation of carriers to monitor their qualifications through additional items of the Act. Pursuant to Article 5(4) of the Road Transport Act, drivers who are nationals of Member States and drivers who are third-country nationals employed in or working for legal entities or trades and crafts established in the Republic of Croatia, who have acquired their initial qualifications and completed their periodic training, and who operate vehicles requiring a driving licence, shall be entered in the Register of Professional Drivers. A national carrier or a carrier of the European Union must not allow its vehicle to be operated by a driver who is not professionally qualified in accordance with the provisions of the Road Transport Act of 2018, which regulates the professional qualification of drivers.⁴⁹ According to Article 9(6), drivers providing taxi transport services are not required to attend periodic training.

In the new solution, the conditions for proving financial capacity that did not exist in the old Act have also been facilitated for taxi drivers, and they significantly facilitate the acquisition of a licence and starting a business with minimal financial resources. Thus, Article 18(4) provides for a new possibility only for taxi drivers, according to which "a legal or natural person - a craftsman who performs passenger transport by taxi, proves his/her financial capacity with a valid insurance policy for all passengers in a vehicle engaged in performing passenger transport by taxi, which is concluded in accordance with a special regulation governing compulsory road traffic insurance." The provision stipulating those assets totalling at least EUR 9,000 must be at one's disposal for the first vehicle was evaded in this way.

The legislator also introduced significant changes to the way of applying for a licence, enabling submissions in electronic format, including all necessary attachments, and removed the need to show a special extract of the licence with each ride, replacing it with the obligation to have a simple copy,⁵⁰ which will be discussed in detail in the next part of the paper.

⁴⁷ Hiring a vehicle with a driver is a special form of road passenger transport, in which, based upon a written contract, the lessor (carrier) undertakes to make available to the lessee (tourist or travel agency, hotel, road transport agent) a high class M1 car comprising a maximum of four passenger seats in addition to the driver's seat (at least an E-segment vehicle) with the driver, in order to provide a special purpose transport service (limousine transport, VIP transport, transport of a small number of people for purposes of tourism, emergency transport, etc.), where drivers and vehicles must meet the special conditions prescribed by the ordinance adopted on the basis of this Act, which does not have the characteristics of passenger transport by taxi, and where the service must be specified on the basis of a time unit (hour or day), and payment is made by a cashless transaction. *Zakon o prijevozu u cestovnom prometu*, Official Gazette, Nos. 41/2018, 98/2019, 30/2021, Art. 4, point 16.

⁴⁸ *Ibid.*, Art. 7.

⁴⁹ *Ibid.*, Art. 5(5).

⁵⁰ *Ibid.*, Art. 23(15).

3.4.3. Changes to vehicle requirements and the necessary documents in the vehicle

In addition to the aforementioned conditions referring to drivers, changes have also occurred in terms of the requirements that must be met by vehicles for the provision of taxi services. Thus, Article 13 defines new requirements for vehicles related to external markings on a vehicle and vehicle interior design, and for the first time, vehicle age is included as one of the basic requirements.⁵¹ According to the Ordinance on special requirements for vehicles used for public road transport and transport for personal needs, a category M1 vehicle for passenger transport by taxi must not be older than seven years, and as of 1 January 2022, it must not be older than five years,⁵² which has a positive effect on the environment and passenger safety.

In the Road Transport Act of 2018, everything is reduced to having a permit granted by a local self-government unit for the area where taxi services are provided and the licence for passenger transport by taxi. "When performing passenger transport by taxi, i.e. while driving, a taxi driver is obliged to have a copy of the permit in the vehicle."⁵³ Clearly, there is still an obligation to have other documents based on other positive laws governing participation in road traffic that must be possessed by all drivers, such as a driving licence and a vehicle registration certificate, but also documents related to the fiscal cash register as a fiscal receipt is used to issue the invoice.

3.4.4. Changes to taxi permits issued by local self-government units

One of the most important conditions for the provision of taxi services was, and remains, a taxi service permit issued by a competent transport department in the local self-government unit, i.e. the City of Zagreb.⁵⁴ However, a legal description has changed significantly to the detriment of the interests of local self-government units, which played a more important role within the framework of the old solution through the adoption of their own regulations. Thus, with the old regulation of 2013, local self-government units enacted regulations on the basis of which they could, in accordance with the law, regulate the number of permits issued for their area based on the now outdated definition of passenger transport by taxi.⁵⁵ Nowadays they can only regulate the locations and equipment of taxi stands, the way they are used, as well as the cost of the permit fee.

The new solution explicitly prohibits local self-government units from limiting the number of permits issued in their area (Article 47(5)). The latest amendments to the Road Transport Act of 2021 prescribe the obligation of the local self-government unit or the City of Zagreb to keep records of issued taxi permits, which is an integral part of the National Register of Road Transport Undertakings (Article 47(9)).

According to Article 47(8), "The maximum fee for issuing a permit shall not exceed one tenth of the average monthly net salary in legal entities in the local self-government unit, i.e. the City of Zagreb, for the last month for which data were published, which precedes the permit application." Furthermore, "the administrative body of the local self-government unit, i.e. the City of Zagreb, is obliged to consider the permit application and issue an appropriate decision within 15 days from the day on which the application was submitted."⁵⁶ This legal solution reduces the influence of the local self-government unit on the number of permits issued for its area, as well as possible favouritism in terms of issuing a limited number of permits. Likewise, a ban on raising the price made it easier for

⁵¹ Confirmation that the vehicle meets the above special requirements must be kept in the vehicle during transport and in case of supervision, the driver must show it to the person authorised for supervision. *Ibid.*, Article 13.

⁵² Pravilnik o posebnim uvjetima za vozila kojima se obavlja javni cestovni prijevoz i prijevoz za vlastite potrebe, Official Gazette, Nos. 50/2018, 56/2019, 107/20202, Art. 3.

⁵³ Zakon o prijevozu u cestovnom prometu, Official Gazette, Nos. 50/2018, 56/2019, 107/20202, Art. 47(18).

⁵⁴ A legal or a natural person, i.e. a craftsman, can obtain a permit from several local self-government units if they meets all the conditions. *Ibid.*, Article 47(3). To be granted a permit, it is necessary to have a valid licence to perform passenger transport by taxi in domestic road traffic. According to the Road Transport Act, the application for a permit can be submitted in written or electronic form, which should certainly be commended.

⁵⁵ Zakon o prijevozu u cestovnom prometu, Official Gazette, No. 82/2013, Art. 56.

⁵⁶ Zakon o prijevozu u cestovnom prometu, Official Gazette, Nos. 50/2018, 56/2019, 107/20202., Art. 47(11).

independent craftsmen-drivers to meet the eligibility requirements for a work permit. This measure encourages employment of young people and their entry into the passenger transport market.

This new legal solution also has its opponents. The mayors of large cities on the coast, such as Split and Dubrovnik, have expressed their concern, asking the Ministry to amend the current Act by introducing exceptions under the umbrella of “local self-government units on whose territory there are sites that are inscribed on the UNESCO World Heritage List.”⁵⁷ In this way, these two cities would be exempt from the current situation in which they are unable to make an independent decision on the number of permits granted for performing passenger transport by taxi, under the pretext of preventing normal traffic on the streets for both citizens and emergency services in the height of the tourist season.⁵⁸ Regarding the issuance of permits, representatives of taxi drivers also expressed their dissatisfaction with the existing solutions after the amendments to the Road Transport Act of 2021, which have not changed in this respect.⁵⁹ They also pointed out that taxi drivers are not subject to professional training in terms of knowing the cities in which they operate, which contributes to traffic congestion and traffic violations, which adversely affects the safety of all traffic participants. Normally, taxi drivers must have passed an exam on knowledge of basic data on cultural, economic, tourist, traffic and other important facilities and sights in the area where transport is performed pursuant to Article 59(1) of the Road Transport Act of 2013, and as of 2018, this obligation does not exist. It is clear that the market will continue to evolve and this will sooner or later lead to new changes to the existing Act.

The amendments further included a legal solution referring to the area in which taxi services are carried out, where a small change in the legal text allows the service to be carried out outside the area of the unit for which the permit was granted, provided that boarding starts in the area for which the permit is held, without the need for local regulations that would limit it. The decision of 2013 required that passenger transport by taxi be performed within and from the area of the local self-government unit, i.e. the City of Zagreb, in whose territory the carrier is headquartered/resident, and the regulation of the local self-government unit could determine under which conditions transport is allowed outside the area of the unit.⁶⁰

A significant change occurred by changing this provision in the Road Transport Act in 2018, which states that passenger transport by taxi is performed so that the carrier performing the taxi transport activity *may board a passenger and start transport* only in the local government unit, i.e. the City of Zagreb, *for which it has a permit* (Article 48(1)).

Furthermore, it is stipulated that if the carrier provides a service of passenger transport by taxi by using a taximeter, the taximeter must be switched on in the vehicle when the taxi is in service, and the price list must be displayed in a prominent position in the vehicle. The taxi fare rates, i.e. the price list, are set by the carrier and it must contain the minimum price per kilometre travelled. However, “if the carrier provides a passenger transport service by taxi via an electronic application where the passenger can see the maximum price and the planned route in advance, the taxi service application must be turned on in the vehicle during the entire ride.”⁶¹

The use of an electronic application is now explicitly allowed, and the obligation to use a taximeter in that case no longer exists. It is also important that the service starts in the area of the unit for which the carrier has a permit, and it can continue to another area without fear of special regulation by another local government unit. In this way, for example, incidents are avoided among drivers with permits issued by the cities of Velika Gorica and Zagreb in relation to transport to and from the Dr.

⁵⁷ Radio Dubrovnik, Franković i Opara predložili izmjene Zakona o prijevozu u cestovnom prometu, <https://radio.hrt.hr/clanak/frankovic-i-opara-predlozili-izmjene-zakona-o-prijevozu-u-cestovnom-prometu/205387/>, accessed 20 January 2020.

⁵⁸ Ibid.

⁵⁹ HINA, Taksisti bijesni na Ministarstvo prometa: "Namjerno su nas prevarili? Usvojeni prijedlog izmjena zakona je samo kozmetika", <https://dnevnik.hr/vijesti/hrvatska/prijevoznici-splita-i-dubrovnika-vlada-podrzava-kaos-u-prometu---643508.html>, Accessed 29 April 2020.

⁶⁰ Zakon o prijevozu u cestovnom prometu, Official Gazette, No. 82/2013, Art. 57.

⁶¹ Zakon o prijevozu u cestovnom prometu, Official Gazette, Nos. 41/2018, 98/2019, 30/2021., Art. 48(2).

Franjo Tuđman airport in Zagreb.⁶² Such ride involves two separate local government units, and each unit was able to protect carriers from its area by enacting its own regulations. They are now in an equal position.

3.4.5. Changes related to transport contracts

The issue of road transport contracts and the illogicalities introduced by the Road Transport Act of 2018 have already been discussed in the chapter, so we will only briefly look at the problems related to passenger transport by taxi.

In comparative law, contracts in taxi transport are concluded informally and by consensus, by entering the vehicle. In the Republic of Croatia, the only acknowledgement of the completed contract is the invoice confirming payment for the service rendered, which does not contain all the essential elements of the contract and thus cannot be treated as a written transport contract, with signatures and all other previously stated legal conditions for written contracts. If passenger transport by taxi is contracted via a mobile application or new platforms, as stated by Radionov, this does not meet all legal requirements, since it is not possible to fully identify the contracting parties. In this case, no document in e-form on the transport service rendered is available after transport, which could possibly qualify as a written contract for passenger transport by taxi in the event of a dispute under that contract.⁶³ Thus, in practice, all taxi transport related contracts are null, which results in carrier liability on a non-contractual (tort) basis.

4. Conclusion

The importance of proper legal regulation of transport in the Republic of Croatia, and especially passenger transport by taxi, is noteworthy due to the fact that in many tourist destinations public transport is not sufficiently developed. Modern passenger transport seeks to meet the needs of people who travel more and more but is also obliged to achieve other goals: reducing traffic congestion and environmental pollution, but also providing travel opportunities for those who do not have their own car or are not near public transport.

Amendments to Croatian legislation governing passenger transport from the very beginning (1991) were not appropriate, and any changes to the regulations governing road transport were expected with great care by both science and practice. However, changes to legislation to date have not been satisfactory in the area of transport contracts. Namely, the latest amendments to the Road Transport Act have prescribed a formal transport contract form, which is not the case in either international or European sources of law. This situation is difficult to implement in practice, as carriers do not enter into passenger transport contracts in writing at points of sale, but only issue tickets that are not contracts. The consequence of not concluding a contract in writing will be their nullity. In this sense, the carrier will not be liable in the event of damages on the basis of contractual, but on the basis of non-contractual liability. What we certainly want to point out is that in our opinion, the new legal solution, which requires a written contract of passenger transport, is not sufficiently presented to the public, even in professional circles. It is therefore necessary to additionally warn carriers and transport users of this situation and instruct them on harmonisation of business processes, i.e. the use of transport in accordance with the existing legal solutions.

Digital technologies are changing all aspects of society, including passenger transport. In the part of the paper related to passenger transport by taxi, numerous amendments to the Road Transport Act of 2018 are presented in relation to the previous solution of 2013, which occurred in accordance

⁶² Trajković, Sergej, Jutarnji list, Jednaka relacija i kilometraža, a račun za taksi 50% skuplji! Kako je moguće da od centra Zagreba do Plesa vožnja košta 110, a natrag čak 170 kuna?, <https://www.jutarnji.hr/vijesti/zagreb/jednaka-relacija-i-kilometraza-a-racun-za-taksi-50-skuplji-kako-je-moguce-da-od-centra-zagreba-do-plesa-voznja-kosta-110-a-natrag-cak-170-kuna-4727501>, accessed 20 January 2020.

⁶³ Radionov, Nikoleta, Obvezan pisani oblik ugovora o cestovnom prijevozu prema Zakonu o prijevozu u cestovnom prometu iz 2018. godine, *Transporter*, No. 3/2021, p. 7.

with the new challenges of the modern age and technological progress. It is clear that the legislator has been looking for solutions that put 'classic' taxi drivers and new carriers in the taxi service market on an equal footing. Advances in society and modern technologies have forced Croatian legislation to regulate transport booked by electronic applications, thus preventing unfair competition for taxi carriers. This solution also aims at avoiding the need for taxi drivers to protest against unfair competition as well as the need to protect their rights in court. The legislator is of the opinion that the implemented changes will lead to the creation of new jobs and additional market opening. The real effects will be seen with a time lag that the 2018 Act has not had so far as the COVID-19 pandemic has caused significant disruption to all modes of transport. It is indisputable that now some widely available services such as Uber are legally better regulated, thus creating the basis for equal opportunities to compete in the market with a free price system. Likewise, clear legal regulation and prescribed conditions that must be met by both drivers and vehicles used in transport in a situation where passenger transport by taxi is performed by using an electronic application harmonises the rules for all taxi transport participants.

All of the above will mostly benefit end users who will have at their disposal an increasing selection of available services at competitive prices. The arrival of new service providers has forced the current taxi carriers to improve their services and modify their prices.

Changes to legislation related to passenger transport by taxi have led to the liberalisation and opening of the taxi market, but they have also left certain problems in practice. The provisions on contracts related to passenger transport by taxi, but also road transport contracts in general, are not appropriate and require an urgent change. We are of the opinion that the provision of Article 97 of the Road Transport Act should be amended within the existing Road Transport Act, in order to meet the needs of modern transport and harmonise the Croatian legal solution with comparative solutions in such a way that a traditionally informal legal system remains (or in the case of Croatia, becomes) as such.

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