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SPECIFICS OF LEGAL REGULATION OF THE CIVIL RESPONSIBILITITY OF AIR CARRIERS: INTERNATIONAL-LEGAL ASPECT

In this article authors examines the specifics of legal regulation of the civil responsibility of air carriers, especially in the international legal sphere.

Air transportation is one of the most dangerous areas of the human activity. High risks and considerable extent of damages caused by these activities make lawyers of the whole world more and more often attend to legal analysis of the mechanism of civil liability of air carriers (airlines).

Liability of the air carriers (airlines) is one of major and most acute problems of the international air law. In this case one can speak of collision of commercial and financial interests of shipment companies, cargo owners and passengers. Therefore this question is in the focus of international conferences of all levels and is the subject of both theory and practice.

Main international-legal acts which govern order and limits of responsibility of air carrier arc the Warsaw Convention [1], the Hague Protocol, the Guadalajara Convention, the Guatemala Protocol and the Montreal Convention [2].

Let's analyze the order, grounds and limits of responsibility of air carrier under the Warsaw and Montreal Conventions.

The issue of airlines responsibility for causing injuries to passengers and damaging luggage along with delays in their carriage, which presents the main problems with regards to responsibility, is settled in the Warsaw Convention which was adopted in Warsaw on October 12th, 1929 and signed by 31 countries. This international act contains a number of general provisions as well as important practical instructions in this area. According to Art. 17-19 of the Warsaw Convention air carrier is liable for:

S any accident in which a passenger suffers death or injury if the accident occurs on board an aircraft or in the process of the passengers embarking or disembarking;

S damage sustained in the event of the destruction, loss or damage of any registered luggage or goods;

S damage occasioned by delay in the carriage by air of passengers, luggage or goods. [1].

The principle of air carrier responsibility for caused damages is rather clearly defined in the Warsaw Convention. According to Art. 20 the carrier is released from liability if he proves that he has taken all necessary measures to avoid the damage or that it was impossible for him to take such measures.

Thus, the air carrier liability in the Warsaw Convention is based on fault/ guilt; besides the burden of proof of its absence is laid upon carrier. These important provisions are clearly expressed in the text of the Convention and are generally accepted [3, p. 104]. Moreover, particularly stipulated is one of the most common situations which happen in practice that eliminates blame of the carrier - presence of the injured person's guilt. According to Art. 21 of the Warsaw Convention the carrier is partially or wholly exempt from liability if he proves that the damage was caused by or contributed to by the negligence of the injured person and the Court considering the issue admit it possible to use in this case provisions of its own internal law [1].

Foreign courts in their decisions usually come from the fact that referring to use of the necessary measures of the general character by the carrier is not enough him to prove his innocence (and therefore not be liable). The carrier shall prove the existence of certain circumstance, which led to his failure to fulfill the air transportation contract, and cannot be treated as his guilt. In case of unclear reasons which led to violation of air transportation contract the air carrier is adjudged guilty under general rule and shall be liable for it.

It is considred that the rules of the Warsaw Convention of guilt as a condition of air carrier's liability refer only to carriage of passengers, cargo and baggage, but not to hand luggage (unchecked baggage) that remains with the passenger. Concerning hand luggage only limit of the carrier's liability is foreseen. Therefore, the conditions of carrier's liability at non-preserving of hand luggage shall be determined in accordance with the provisions of internal law that is applicable to contracts of international carriage.

Limit of the carrier's liability defined by the Warsaw Convention is as follows: 125,000 francs per each passenger, 250 francs per kilogram of goods and luggage and 5,000 francs per hand baggage of each passenger (Art. 22). According to the Hague Protocol the first of these limits was doubled and amounted to 250,000 francs.

The above limits shall apply to damage caused to a passenger, luggage, hand baggage and cargo as well as to delay in their shipment. Above this limit the court in accordance with its national law can adjudge the plaintiff the compensation for all or the part of the incurred court charges. In case of non-preserving goods and luggage consigned with registered value the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the interest of a passenger (cargo owner) is greater than the actual value.

The above standards of air carriers' liability were actually valid till enactment of the Hague Protocol on September 23th, 1955 on amendment to the Warsaw Convention. Signed by 27 countries, this Protocol changed and amended provisions of the Warsaw Convention of 1929. The changes were brought about not only by technological progress in civil aviation but also by change in economic factors and organizational forms of international air traffic. These are issues of the Protocol which amended the concept of international air transportation and entered a number of changes in processing shipping documents at air carriage.

Another innovative step in amending the Warsaw Convention was signing of the Guadalajara Convention on September 18th, 1961, additional to the Warsaw Convention for setting some rules concerning international air transportation performed by a person not being an air carrier under the contract. The main objective of the latter is the separation of air carrier: a) the contracting carrier, and b) the actual carrier. Also, this convention envisaged joint responsibility of the contract and the actual carrier to passengers and shippers [4].

It is worthwhile mentioning that Warsaw Convention, Hague Protocol, Guadalajara Convention form the basis of the so-called 'Warsaw System' air carrier liability.

Afterwards, rather 'severe competition' on the international air transport market pushed new revision of conventional standards of institute of the air carrier responsibility. Most important from legal point of view was retreat from the principle of guilt as a necessary requirement for the liability of airlines under air carriage contract.

Thus, the Guatemala Protocol, signed at the international conference in Guatemala on March 8th, 1971, envisaged increase of limits of liability: a) objective liability of air carrier for damage caused to a passenger (except for cases when damage is caused by passenger's health or his guilt - up to 1.5 million gold francs (or roughly $ 100,000), b) limit of liability of air carriers for the delay in air traffic at presence of air carrier's fault was set at the level of 15.000 francs per passenger.

Further, "Warsaw System" air carrier liability has been updated by amendments entered by the Montreal Protocol № 1-4, adopted at the diplomatic conference in Montreal in 1975 [4].

Subsequently, due to necessity of updating the extensive Warsaw System (Convention with Annexes: Hague Protocol, Guatemala Protocol) and to secure standards of air carriers liability that meet the requirements of modern aviation the new agreement which became effective on November 4th, 2003 - the Montreal Convention - was signed at the ICAO on May 28th, 1999. Parties to this Convention are 86 countries, including Ukraine [5].

The Montreal Convention became valid for Ukraine on May 6th, 2009 under the Law of Ukraine 'On Ukraine's Accession to the Convention for the Unification of Certain Rules for International Carriage by Air' of 17.12.2008. The main feature of the Montreal Convention is absence of the limit of liability of air carrier; it aims to protect individuals in case of air accidents.

The Montreal Convention of 1999 was the result of continuous work on improvement of both

the mechanism of carrier's responsibility and on the issue of unification and consolidation of all valid documents of the Warsaw System. It is worthwhile considering in detail provisions of the Montreal Convention regarding liability of air carriers in comparison with the Warsaw Convention.

In accordance with the provisions of the Montreal Convention a new principle of compensation was introduced, under which compensation for damages amounts to 100,000 Special Drawing Rights (1 SDR established by the International Monetary Fund corresponds to $13.7) per passenger. For comparison, the maximum amount that can be obtained for damage to life or health of a passenger under the Warsaw Convention is 250,000 francs (about $20,000), unless under the consent of a passenger and air carrier the transportation agreement sets a higher amount (amounts stated in francs in the Warsaw Convention of 1929 are converted into currency value and amount to 65.5 mg of gold at the standard of fineness of nine hundred thousandths) and under a court's decision. Under the Montreal Convention the court's decision is not required where the damage does not exceed 100,000 SDR.

The Montreal Convention also sets the new limits the carrier's liability for delay of aircraft and for damages caused during transportation. The delay may result in the loss of 4150 SDR (about $5000) to the carrier.

The Montreal Convention entered changes into solving the problem of the carrier's liability for destruction, loss, damage or delay of baggage [5]. According to paragraph 2 of Art. 17 of the Montreal Convention the carrier is liable for damage sustained in case of destruction, loss or damage of checked baggage only provided that the event which caused the destruction, loss or damage took place on board an aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from the fault of its servants or agents.

Thus, the Convention divides the entire luggage into two categories: registered and unregistered. The carrier's liability will depend on the category of damaged baggage. With regard to checked baggage the Convention establishes absolute carrier's liability, since it occurs in any case, regardless of his fault, unless the damage occurs as a result of the defect, deficiency or quality of the luggage, or when the negligence or fault action or inaction of the passenger caused or contributed to damage of baggage. However, the liability system for unchecked baggage is completely different. This system can be described as subjective, because the carrier's liability will depend directly on presence of guilt of the carrier's agents or servants [6, p. 84]. Regarding setting the limits of carrier's liability for loss, damage or destruction of baggage, the limit of the carrier's liability changed from 250 francs (about $ 20) per kilogram under the Warsaw Convention to 1.000 SDK per passenger under the Montreal Convention.

The Montreal Convention has also extended protection of passengers and in addition to four options of jurisdiction established by the Warsaw Convention (at domicile of the carrier, at its principal place of business, at a place of business through which the contract has been made or at the place of cargo destination), added the fifth option, which allows victims to sue the responsibility of the carrier at the place of their residence [5].

Another indisputable advantage of the Montreal Convention is that it introduces two-level system of compensation. The first level - an objective responsibility in the amount of 100,000 SDK regardless of the fault of the carrier. The second level is based on the presumption of guilt of the carrier, which implies no limitation of liability at all.

Summarizing the above we can conclude that the Warsaw Convention governs various types of civil liability: tricky liability for damage to life and health of passengers, because such liability arises from breach of absolute subjective rights; contractual liability for loss, damage and delay of baggage and cargo, since it arises due to improper fulfillment of the contract of carriage [7, p. 761. Contrary to the Warsaw Convention the Montreal Convention is very progressive in terms of the provisions on civil liability of air carriers. However, till now it has not solved the problem of multiple liability schemes established by the documents of the Warsaw System. In order to make the mechanisms defined in the Montreal Convention work, it is necessary that as many countries as

possible joine it and refused from the documents of the Warsaw System. However, not all countries are willing to join it because of too high, to their mind, limits of liability and continue to use the Warsaw Convention, the Hague Protocol, Guatemala Protocol. That is, the problem of multiple schemes of liability of air carriers remains unsolved till today.

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