

UDC 347.763.2(043.2)

LEGAL GROUNDS FOR AIR CARRIER LIABILITY FOR BODILY INJURY OR DEATH OF A PASSENGER

Anastasiya Tyubay

National Aviation University, Kyiv

Scientific advisor – Oksana Myronets, PhD in law

Keywords: air carrier, liability, bodily injury, death.

Civil aviation activities, like any other activity of the state and its bodies, are carried out in compliance with all necessary conditions to ensure and preserve human life and health, which are the highest value (Articles 3, 27 of the Constitution of Ukraine) [2].

The purpose of the research is to analyze the legal grounds for air carrier liability for bodily injury or death of a passenger, and to compare its approaches in sources of Ukrainian and international law. Relevance is expressed through enshrining of air carrier`s liability in provisions of international and national normative legal acts. During the research its object – air carrier`s liability for bodily injury or death of a passenger, was compared through the prism of the international and national law of Ukraine.

The general provisions on compensation for damages are set out in the Civil Code of Ukraine (CC of Ukraine). This is confirmed by Article 928 of the CC of Ukraine, which states: "The carrier's liability for damage caused by injury, other damage to health or death of a passenger is determined in accordance with Chapter 82 of this Code, unless the contract or law establishes the carrier's liability without fault [4]." In turn, paragraph 2 of Chapter 82 of the CC of Ukraine provides for both a general procedure for compensation for damage caused by injury or other damage to health (Article 1195) and with certain specifics: in the performance of contractual obligations (Article 1196), under an employment contract (Article 1197), in respect of a minor and a minor (Article 1199), caused by the death of the victim (Article 1200), etc.

In accordance with the Law of Ukraine No. 685-VI dated 17.12.2008, Ukraine acceded to the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention 1999) (hereinafter - the Convention). The Convention applies to any international transportation of passengers, baggage or cargo carried by aircraft (Article 1 of the Convention) [1].

Certain regulations of the national legislation duplicate the provisions of the Montreal Convention 1999 (the "Convention"), despite the fact that it is already part of the Ukrainian legislation. According to the Rules of Air Transportation of Ukraine "Rules of Air Transportation and Passenger and Baggage Handling" (the "Rules"): "The air carrier is liable for damage that caused the death or bodily injury of a passenger only if the event that caused the death or bodily injury occurred on board the aircraft or during boarding or disembarkation of the passenger on board the aircraft [3]", which corresponds to part one of Article 17 of the Convention [1]. In terms of their content, the Rules almost completely repeat the content of the Convention, of course, taking into account the peculiarities of Ukrainian legislation.

It is worth remembering that the presence of bodily injury or death of a passenger is not always the ground for air carrier liability. In accordance with the provisions of the Rules and the Convention, the air carrier is fully or partially exempted from liability if it proves that the unlawful act/inaction of the person claiming compensation led to the occurrence/infliction of damage [1].

Conclusion

The legal grounds for the air carrier's liability for bodily injury or death of a passenger are: 1) such damage was caused on board the aircraft or during boarding/deboarding; 2) absence of actions/inactions of the passenger that could have led to the damage. If at least one of these grounds is absent, legal liability of air carrier does not arise.

References:

1. Конвенція про уніфікацію деяких правил міжнародних повітряних перевезень (укр/рос) ІКАО; Конвенція, Міжнародний документ від 28.05.1999. URL: https://zakon.rada.gov.ua/laws/show/995_594#o98 (дата звернення: 21.03.2023).

2. Конституція України від 28 червня 1996 р. Відомості Верховної Ради України. 1996. № 30. Ст. 141. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (last accessed: 20.03.2023 року).
3. Про затвердження Авіаційних правил України «Правила повітряних перевезень та обслуговування пасажирів і багажу» Державіаслужба України; Наказ, Правила від 26.11.2018 № 1239. URL: <https://zakon.rada.gov.ua/laws/show/z0141-19#n1196> (last accessed: 21.03.2023).
4. Цивільний кодекс України. Відомості Верховної Ради України. 2003. №№ 40-44. Ст. 356. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text> (last accessed: 20.03.2023).