

Ensuring the safety of international civil aviation as a main principle of international air law

One of the main principles of international air law – the duty of the state to ensure a high level of safety in relation to any flights – is considered.

International air law is an integral system of interrelated and concerted principles and norms assigned between its institutions in accordance with specified legal and material features. Such institutions consist of a separate group of principles and norms specially purposed to regulate some of the homogeneous, relatively independent relations included in the subject of international air law.

The main document in the field of international air law, a code of “international flights” is the Convention on International Civil Aviation (also known as Chicago Convention) signed on December 7th, 1944 in Chicago by 52 signatory states [1]. The Chicago Convention established the International Civil Aviation Organization (ICAO), a specialized agency of the UN charged with coordinating and regulating international air travel. It went into effect on April 4th, 1947, the same date that ICAO came into being. In October of the same year ICAO became a specialized agency of the United Nations Economic and Social Council (ECOSOC). The Chicago Convention establishes rules of airspace, aircraft registration and safety and details the rights of the signatories in relation to air travel [2; 3].

The core of international air law is the basic principles which mean “generally recognized norms of international law of the most general character”. These principles are imperative and contain obligations erga omnes, i.e. commitments to each and every member of the international community. The principles unite the norms of different international air law institutions acting in relation to certain participants of intergovernmental air transport relations into a single legal system. If there is a need to resolve new problems, the principles serve as criteria for legality of the newly adopted norms.

The principles are of great importance in assessing the actions of aircraft operators during flights over state territory. If, instead of the prescribed route, a foreign aircraft engaged in international air navigation follows a foreign route over a foreign territory, such actions are qualified as a violation of the principle of ensuring the safety of international civil aviation.

In the field of bilateral treaties on air services the basic principles play the role of criterion for the legality of bilateral norms.

The basic principles are not always the exclusive product of international law. Some of them have a direct affinity to the principles of national air law. Such an important principle of international air law as the principle of sovereignty over the airspace is recognized by the Chicago Convention, but it is not fixed and established there, since this principle has been long fixed in the national legislation of many states. The Chicago Convention proceeds from the recognition of this

principle. The same concerns the principle of ensuring the safety of international civil aviation. The basic laws on air law are permeated with imperative requirements to ensure the safety of civil aviation both in the air and on the ground. All norms regulating flights and transportations over the state territory are directed to its ensuring. In international law this national imperative norm is recognized as the basic principle.

The principle of ensuring the safety of international civil aviation is understood as the sovereign right of each state to take technical, operational, organizational, air navigation and information measures that ensure the performance of international and domestic flights without jeopardizing life and health of people, the duty of the state to ensure a high level of safety in relation to any flights.

In the international aspect obligations to ensure the safety of international civil aviation are entrusted to the states by international treaties. The Chicago Convention declares its main task to create such conditions for international civil aviation under which it can develop “in a safe and ordered manner”.

Almost all bilateral air services treaties include provisions on mutual obligations to ensure the adequate level of safety, as well as procedures for cooperation on eliminating or resolving situations involving acts or threats of unlawful interference against the safety of civil aviation.

In 1986 the ICAO Council adopted a model article on aviation safety and recommended to use it in the bilateral treaties. Together with the principle of ensuring the safety of international civil aviation, the international legal norms for the safety of civil aviation form an appropriate international legal regime.

In March 2006 ICAO held the Conference for Civil Aviation Chief Executive Officers on Global Strategy in the Field of Safety of Flights where they analysed the current state of safety of flights and adopted new measures to consolidate safety of flights in global scale. It was recognized that the state is responsible for ensuring the safety of flights in the airspace over its territory, including the flights of aircraft of foreign operators and instructed ICAO to prepare the necessary provisions and guidance material on a uniform approach to the monitoring of flights of foreign aircrafts. The Conference also recommended the states to include in their bilateral treaties articles for safety of flights based on the model article for safety of flights developed by ICAO.

In the internal perspective ensuring a high level of safety in the sovereign airspace is a function of the state. Disposing of its airspace the state is obliged to create and maintain the conditions necessary for its practical use. A key condition for such use is safety of flights as a fundamental principle of national air law. In accordance with this principle the state regulates the airworthiness of aircrafts, establishes technical requirements and standards for aerodromes and airports, airways, accepts flight rules and controls them, and determines the procedure for investigating accidents and incidents. Normative rules, regulations and requirements that states adopt for the safe use of their own airspace form the national regime for ensuring the safety of civil aviation. It particularly, they single out the rules concerning the procedure for the conduct of international flights over state territory which indicates that ensuring the security of international civil aviation is part of the national air law.

Thus, international and legal and national regimes of ensuring the safety of civil aviation closely interact with each other on the basis of the principle of ensuring the safety of international civil aviation.

International air law originated and developed exclusively as a right of flights. Until the middle of the 1920s the question of the right to fly was almost the only issue solved in interstate relations over air communications. The number of passengers, cargo and mail transported (the volume of transport), the vesting of one or more airlines with the authority to make international flights, the coordination of tariffs, the right to unload or take on board passengers at certain points and much more which is today the institution of “international air transportation law” remained outside the legal regulation for some time.

The principles of legal regulation of international flights reflect the basic principles and objective laws of the development of this institution of international air law, play a role of a system-forming factor in it, serve as criteria for the legality of specific legal norms in the field of international flights, determine the direction of codification and progressive development of the right to international flights, specificity of liability in case of violation of the procedure and conditions of their implementation.

Thus, the main principles are:

a) the licensing procedure for international flights in sovereign airspace establishing the legal grounds and conditions for entry into state territory, departure from its territory and flight within such territory;

b) freedom of flight in open airspace (over the high seas and Antarctica);

c) ensuring the safety of international flights;

d) the principle of mutuality in provision and realization of the right to international flight.

As in legal literature the question of the principles of the institution of any international law branch has not been sufficiently studied, it is necessary to determine the place of the principles we are considering in the system of international law in general and international air law in particular.

In international law it is necessary to distinguish the basic principles of international law, the basic branch principles and principles of the institution of the relevant international law branch.

The first one includes the main generally recognized principles of international law, such as sovereign equality, the territorial integrity of states, non-interference in internal affairs, peaceful settlement of disputes, cooperation between states, etc., i.e. principles that are and should be observed by states in all spheres of international life, including in the field of international flights.

The principles of the institution of the international law branch refer to the third hierarchical level and directly follow from the branch principles, which, in turn, are related to the basic principles of international law. Special principles of the institution of international flights “work” only in this area of international relations. They form the basis of legal regulation of international flights, and without the practical implementation of these principles the realization of such flights would be difficult, if not impossible [1].

Conclusions. The safe conduct of international flight is the most important condition for the operation of aviation. It should be also noted that the principle we are considering has not been directly expressed in international air law, unlike, for example, the basic principles of general international law consolidated in the UN Charter and other documents. By the time of its formation and approval the principle of ensuring the safety of international flights lags far behind the commencement of such flights which is due to a number of objective circumstances.

References

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