



AIR SAFETY AND DISPUTE RESOLUTION IN AVIATION LAW: CROSS-BORDER PERSPECTIVE. SELECTED ISSUES

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ABSTRACT: In occasion of the 85th Anniversary of Warsaw Convention have been convened at Warsaw International Air Law Conference (24 October 2014). Have been discussed developments and challenges in aviation liability and insurance. In the article have been discussed in comparative approach air safety contemporary issues of air safety and aviation disputes resolution in chosen countries. Also some Polish results of the aviation security research have been presented.

KEY WORDS: Air safety, Aviation law, Dispute resolution, Civil proceedings, Criminal proceedings, Administrative proceedings, Avionic systems, Satellite navigation, Management of air traffic.

STRESZCZENIE: Z okazji 86 rocznicy Konwencji Warszawskiej z 1929 roku, zorganizowano w Warszawie 24 października 2014 roku Międzynarodową Konferencję Prawa Lotniczego. Przedmiotem debaty były problemy związane z rozwojem prawa lotniczego i wyzwaniem w dziedzinie odpowiedzialności i ubezpieczeń w lotnictwie cywilnym. W artykule omawiane są w związku z tym, w ujęciu porównawczym, problemy aktualnego stanu regulacji prawnych dotyczących bezpieczeństwa transportu lotniczego oraz regulowania sporów lotniczych w wybranych krajach. Przedstawiono także niektóre wyniki badań naukowych nad bezpieczeństwem lotniczym prowadzonych w Polsce.

SŁOWA KLUCZOWE: Bezpieczeństwo lotnicze, Prawo lotnicze, Regulowanie sporów, Procedury cywilne, Procedury karne, Procedury administracyjne, Systemy awioniki, Nawigacja satelitarna, Zarządzanie ruchem lotniczym.

1. Introduction

In Warsaw, Poland, at the Royal Castle have been organized by the Civil Aviation Authority and Warsaw Chopin Airport in 24 October, 2014 International Air Law Conference in occasion of the 85th Anniversary of Warsaw Convention. Conference were attended by eminent speakers from many countries.

The Warsaw Convention as "The Convention for the unification of certain rules relating to international carriage by air" was prepared for signature on 12 October, 1929 in Warsaw and come into effect in 1933, and is still in use.

The main purpose of this Convention is to unify international air transport issues concerning transport documents and liability of the air carrier. As of 5

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July 2000, 146 countries were parties to the Warsaw Convention. Today as a result of the adoption of the Montreal Convention of 1999 this number of countries has changed.

During the recent International Air Law Conference at Warsaw have been discussed significant issues on: a) Values of challenges to the worldwide Warsaw Regime on air carrier liability, b) Liability of manufacturers and lessors of aircraft engines and component parts, c) Developments in aviation liability and insurance.

The Conference attendees were receivers of special issue on “The International Comparative Legal Guide to: Aviation Law 2013. 1st Edition. A practical cross-border insight into aviation law”, Published by Global Legal Group, in association with Clyde & Co LLP, London 2013.

In Chapter 1 of this publication Philip Perrota and Alan Meneghetti presents short article on: Global Aviation – The Next Ten Years.

In Chapter 2 Donald R. Andersen discusses: Recent developments in U.S. aviation product liability law as jurisdiction for accidents in the United States and outside the U.S. over manufacturers as well as over U.S. corporations and subsidiaries. Also federal preemption of aviation product liability cases and recent developments under the General Aviation Revitalization Act (GARA) have been presented.

As Chapter 3 – E. M. Van Laanen and Maria E. Gonzales presented “The Cape Town Convention: Key issues for the Practitioner”. The Convention on international interests in mobile equipment and Protocol to the Convention on international interests in mobile equipment on matters specific to aircraft equipment have been both signed in Cape Town, South Africa on November 16, 2001 and on March 2006 become ratification and implement by eight countries (as on 2013 – over fifty). This treaty created a new legal concept – the “International Interest” changed the rules for protecting priorities and legal rights in aircraft equipment, and added additional requirements to the perfection of such rights and interests by establishing the Cape Town International Registry. The purpose of this treaty is to provide a stable international regime for the protection of creditors, conditional sellers and lessors. However, many issues the legal community has only begun to examine in action. The treaty is a simple concept and in theory works very well. In 2008, the Revised Official Commentary to the treaty created change to the perfection of rights and interests in helicopter engines.

2. Air safety: legislation and administrative measures as well as legislative and regulatory regime applies to air accidents

International air law should serve to protect such significant values as standards of behaviour in civil aviation: human life and health, the need for security and safety of flights operations as well as morally right conduct to all concerned. As to Kierkegaard’s observation: life is experienced going forward but than could only be understood properly by looking back.

Aviation have been regard in a particular way as such industrial sector that is a kind of unique combination of science and technology, production, innovation, macro-and micro-economic development, transportation and infrastructure support, demographic redistribution and growth, as well as real contribution to

globalisation and as an attractive quality¹.

More international flight means more negative environmental impact, and increases the need for security and healthy – type considerations. Aviation safety depends on quality of manufactured aviation products distributed also in other foreign countries.

The nature of regulatory developments in recent times seek to deal with the negative impact of the vast numbers of aircraft and passengers who travel the globe². The environmental aspects of air travel become more relevant to more places and their interaction with existing regulations and law, conflicts of law issues and the changing aeropolitical environment will all need to be mastered by the aviation lawyer, who can make a difference on behalf of air travel client, as well as more generally both at a local and global level³.

In Austria the basic law is Aviation Act (Luftfahrtgesetz – LFG) which provides several rules relating to the safety of air transport operations⁴. Persons involved in aviation operations need to be licensed by the Austro Control GmbH. Austria, as a Member State of the European Union is also subject to all aviation-specific legislation by the EU regulatory bodies⁵. Air safety is not regulated separately for commercial, cargo and private carriers.

Legislative and regulatory regime in Austria applies to air accidents⁶ is composed as the system and procedure of investigation of aircraft accidents and set out in the Accident Investigation Act (Unfall untersuchungsgesetz – UUG), which implemented EC Council Directive No. 56/94, establishing the fundamental principles governing the investigation of civil aviation accidents and incidents and Regulation (EU) No. 996/2010 on the investigation and prevention of accidents in civil aviation and repealing Directive No. 94/56/EC. Aircraft accidents are investigated in an administrative procedure by the Federal Accident Investigation Agency, which may act independently and is not bound to any instructions of the Federal Minister of Transport, Innovation and Technology. The exclusive duty of the above Agency is to determine the cause of the accident, in order to elaborate safety recommendations to avoid similar accidents in the future. The Agency is not entitled to comment on liability issues, which are determined by Austrian civil courts. Air accidents causing bodily injury or death to persons are subject to criminal investigation proceedings of the Federal Prosecution Authority.

In Brazil, the principal pieces of legislation which govern air safety are Annex 13 of the Chicago Convention 1944 incorporated into Brazilian law in 1946, 1982, 1986. Decrees of 7 June 1982: modernised and reorganised the Brazilian System of Investigation and Prevention of Aeronautical Accidents, originally created in 1948, and turned the Center of Investigation and Prevention of Aeronautical Accidents – which administers air safety in Brazil – into a military organisation subordinated to the Chief Aeronautic Officer⁷. Other rules serve to update the air safety system, and may apply to different categories of aircraft

¹ P. Perrotta, A. Meneghetti, *Global Aviation – The Next Ten Years*, op. cit., p. 1.

² *Ibidem*, p. 3.

³ *Ibidem*, p. 3.

⁴ M. Flitsch, I. Gogl, Austria, in: *The International Comparative Legal Guide to: Aviation Law, 2013* (cited as: *Aviation Law, 2013*), op. cit., p. 18.

⁵ *Ibidem*.

⁶ *Ibidem*, p. 19.

⁷ J. Costa, G. Lasalvia, Brazil, in: *Aviation Law, 2013*, op. cit., p. 32.

and operations. The main principles of air safety applied to all of them are the same⁸.

Brazil follows the rules of Annex 13 relating to the investigation of aviation accidents. Additionally the Brazilian Aeronautical Code also set some basic rules relating to the Brazilian System of Investigation and Prevention of Aeronautical Accidents, as of 1982, 2005, 2008⁹.

In Canada, under the Aeronautics Act, the Minister through Transport Canada and the Canadian Aviation Regulations, has the jurisdiction to introduce laws and regulations to ensure the safe and proper operation of aircraft and aviation safety in general¹⁰. The Canadian Transportation Accident Investigation and Safety Board (CTSB) is responsible for advancing transportation safety by identifying safety deficiencies through accident investigations and making recommendations designed to eliminate or reduce those deficiencies¹¹. This Board is fully independent of Transport Canada and it may recommend safety measures, but has no authority to implement them. Several offences in which penalties are prescribed for the unsafe operation of an aircraft have been included into the Canadian Criminal Codes.

Air safety for commercial, cargo and private carriers is regulated in Canada under the Aeronautics Act, however safety standards for commercial carriers are typically more stringent than standards applied to private aircraft: significantly more stringent are the safety requirements applicable to the carriage of dangerous goods by air for commercial purposes¹².

By the Canadian Transportation Accident Investigation and Safety Board Act have been prescribed the obligations and responsibilities of the operator involved in the accident, as well as the handling and protection of cockpit voice and data recordings¹³. Regulation 6 to this Act requires an air carrier to report to the Safety Board any accident in which a person sustains injury or death or the aircraft sustains significant damage or is missing¹⁴. Also incidents involving certain major component failures are also required to be reported by air carriers. A carrier is obliged to maintain an emergency response plan which addresses specific issues including: passenger and crew welfare; preservation of evidence aircraft; and wreckage removal.

In Colombia, the principal piece of legislation regulates air safety¹⁵. The Colombian Civil Aviation Authority regulates every aviation matter through Colombian Aviation Regulation.

Some specific rules depending on the kind and size of the aircraft¹⁶. This Regulation defines the events that are considered accidents and describes the steps to be followed upon an investigation of an accident. The Commercial Code establishes general rules regarding the liabilities in the event of collisions between aircrafts and damages to third parties on land¹⁷.

In the Czech Republic air safety is administrated by the Civil Aviation

⁸ *Ibidem*, p. 33.

⁹ *Ibidem*.

¹⁰ D. G. Pankratz, H. Dery, Canada, in: *Aviation Law*, 2013, op. cit., p. 38-39.

¹¹ *Ibidem*, p. 39.

¹² *Ibidem*, p. 39.

¹³ *Ibidem*, p. 39.

¹⁴ *Ibidem*, p. 40.

¹⁵ J. E. Del Hierro Hoyos, Colombia, in: *Aviation Law*, 2013, op. cit., p. 46.

¹⁶ *Ibidem*.

¹⁷ *Ibidem*, p. 46.

Authority (CAA). The principal legislation is based on regulations European Community and European Union, in accordance with Standard and Recommended Practices of ICAO¹⁸. Air safety is regulated jointly for all types of commercial air transport and a different regime applies only to non-commercial air operators. The Czech Republic has established an independent investigative authority, the Air Accidents Investigation Institute (AAIL). Its conclusions have only informative power and cannot issue any binding orders, but recommendations. In case of any air accidents or incident, the pilot or the aeronautical services operator must report to the CAA and AAIL without delay.

France as a signatory to the Chicago Convention must ensure that air navigation equipment and operations comply with ICAO standards, and also implements regulations issued by the European Aviation Safety Agency (EASA), whose role has been substantially increased¹⁹. France also set up in the Code des Transports safety rules and controls at airports. This Code provide for specific security control for cargo and air mail carriage. In France is directly applicable European Union Regulation No. 859/2011 to security measures on air cargo and mail coming from non-EU countries into the EU. Air accidents arising from a domestic air carriage are governed by similar rules than the rules provided by the Montreal Convention. In some circumstances, the Warsaw Convention can apply to air accidents. In case of bodily injury or death in addition to the material damage, the judicial investigations will also be carried out under the supervision of an investigating judge of the relevant criminal court. Such investigations will be made by the Gendarmerie des Transports Aériens together with court experts.

In Germany have been adopted regulations of European Community and European Union in the field of civil aviation, and of European aviation safety²⁰. EASA works closely with the Federal Aviation Office. The German Air Traffic Control as a company organised under private law is 100% owned by the Federal Republic of Germany. Flights remain under the control of EUROCONTROL. In Germany an operating licence is required for non-commercial air transport operations of passengers, mail or cargo if those operations are conducted for remuneration (with more than four passenger seats).

The German Federal Bureau of Aircraft Accident Investigation serve to improve aviation safety by determining the causes of accidents and serious incidents and making safety recommendations in order to prevent recurrence, but is not responsible for determining liability²¹. Germany implemented the rules and regulations and processes provided by ICAO and regulations by EC and EU, concerning air accidents. There is also in Germany national Law Relating to the Investigation into Accidents and Incidents Associated with the Operation of Civil Aircraft.

In Greece the security of airports and air safety in general is based on EC Regulation No. 216/2008 and proper national regulations²². The Hellenic Civil Aviation Authority is responsible for planning, developing, enforcing, observing and preserving the National Civil Aviation Regulation, as well as coordinating

¹⁸ R. Kramarik, R. Štátný, Czech Republic, in: *Aviation Law*, 2013, op. cit. p. 51–52.

¹⁹ C. Sportes, France, in: *Aviation Law*, 2013, op. cit., p. 57–58.

²⁰ H. Bürskens, U. Steppeler, Germany, in: *Aviation Law*, 2013, op. cit. p. 63–64.

²¹ *Ibidem*, p. 65.

²² B. Smyrniou, Greece, in: *Aviation Law*, op. cit., p. 71.

the activities of all agents involved in the safety of civil aviation. The above Authority also makes all the arrangements to prevent and repel any illegal actions against the safety of civil aviation in Greece and abroad. It cooperates with foreign security authorities and arrangements.

In Greece safety regulation in the aviation sector apply to all aircraft except for those with historic or scientific value, private and very light aircraft, very small aircraft, helicopters and military aircraft. More specific legislation regulates safety of other types of aircraft²³.

In Greece, legislation regarding air accidents consists mainly of the Air Law Code, regarding liability matters, and Law 2912/2001 on the procedure of investigation of air accidents, which is carried out by the Air Safety and Accident Investigation Committee in term of a six month period²⁴. The countries in which the aircraft is registered may participate in the investigation and give their opinion on conclusions regarding the causes of the accident on the first draft of the findings. A summary of the finding is published in two daily newspapers with the largest sales.

In Italy, safety regulation govern air safety falls within the institutional duties of the Italian Civil Aviation Authority (ENAC), which issues and renews airworthiness certificates and air operator certificates, as well as approves maintenance programmes²⁵. It carries out inspections and controls on aircraft, operated for private and public use. Safety requirements governing commercial and private flights are the same and cover the technical issues of aircraft, air traffic control and public safety requirements²⁶. Some differences relate to administrative, organizational and financial relations. The ENAC regulations (2003) provide, in relation to the aircraft's use, a general distinction between commercial and non commercial operations or a general aviation operations.

In Italy, air accidents are regulated by the Navigation Code and the airport manager and public security authorities have to immediately inform the judicial authority and the Flight Safety National Agency of any accidents²⁷. Any investigation of an accident shall be a subject of a report in a form appropriate to the type and extend of the accident. Any air carriers and providing either commercial or private services-operating to and from Italy must comply with the Regulation EC No. 785/2004 on insurance requirements for air carriers and aircraft operators²⁸.

In Mexico, the legislation regarding air safety consists of the Civil Aviation Law (LAC) and its regulations, the Airports Law and its regulations and the national Safety Law²⁹. The authority responsible for administering air safety is the Ministry of Communications and Transportation. As the main legal framework applicable to air accidents is: the Convention for the suppression of unlawful acts against the safety of civil aviation (1971) and the Convention on damage caused by foreign aircraft to third parties on the surface (1952), as well as LAC and its regulations and search, rescue and research of air accidents regulations, and Safety Management System specifications. Any controversy

²³ *Ibidem*, p. 71.

²⁴ *Ibidem*, p. 72.

²⁵ L. Pierallini, Italy, in: *Aviation Law*, 2013, op. cit., p. 85–86.

²⁶ *Ibidem*, p. 86.

²⁷ *Ibidem*, p. 87.

²⁸ *Ibidem*.

²⁹ S. Chacón, Mexico, in: *Aviation Law*, 2013, op. cit., p. 105.

regarding the air accident shall be settled by following the civil/commercial judicial procedure established in the Mexican Civil Procedures Code and the Mexican Commerce Code, the latter allows arbitration mechanism.

In Netherlands the air safety regulations are based on the instruments of the Chicago convention, Community law and the Joint Aviation Authorities as well as on the principal pieces of national legislation³⁰. Air safety is administered by the Human Environment and Transport Inspectorate. All certified companies are audited at least once a year, and accidents are investigated by the Dutch Safety Board, independently, concluded with a report and recommendations. On the such recommendations all parties involved are obliged to react within a year.

In Nigeria, air safety is governed by the provisions of 2006 Civil Aviation Act, in line with the provisions of the Chicago Convention³¹. The Nigerian Civil Aviation Authority is responsible for administering air safety in the country, in compliance with international standards of air safety. The above mentioned Civil Aviation Act grants autonomy to the Nigerian Accident and Investigation Bureau and regulates air traffic accidents in this country³².

In Poland air safety is administrated, and supervised by the President of the Civil Aviation Office. Poland applies European Union legislation regarding air safety and the national Aviation Act (as amended, Journal of Laws 2012. 933), and the implementing regulations³³, related to the safety of aircraft and airport exploitation, construction requirements, certification, airworthiness and air accidents. Poland's airport authorities must have a Safety Management System manual. In 2013 the European Aviation Safety Programme and Plan have not been implemented. Polish Aviation Act contains the rules applicable to air accidents and air incidents compatible with international rules and EU regulations³⁴.

In Portugal, principal legislation which applies to air safety contains the requirements for the technical certification of national air transport companies and frames the regulation of the technical certification of maintenance organisations and flight operators³⁵ according to this legislation an, aircraft may only be used commercially if the operator holds a licence for operating the aircraft. The capitán is designated as the highest authority on the aircraft and is responsible for the aircraft, the crew, the passengers, the mail and cargo. The on-duty hours and rest periods of pilots are also regulated and there are penalties for failure to comply. Air traffic controllers are also regulated.

In Portugal there are general obligations for each crew member not to perform his duties during a flight, that be under the influence of a substance that may constitute a risk for the safety of the flight or have performed a deep sea dive less than 24 hours before the flight. There are legal requirements for the training of cabin crew. The flight operator must maintain its aircraft fleet in navigable condition, and must have a technical diary on board³⁶.

Regulatory regime applies to air accidents in Portugal have specific provisions apply to flights undertaken by aircraft with a Portuguese licence or

³⁰ G. de Vos, J. Appel, Netherlands, in: *Aviation Law*, 2013, op. cit., p. 120-121.

³¹ Ch. Laleye, B. Attoe, Nigeria, in: *Aviation Law*, op. cit., p. 126.

³² *Ibidem*, 127.

³³ K. Marut, A. Burchacińska-Mańko, Poland, in: *Aviation Law*, op. cit., p. 131.

³⁴ *Ibidem*, p. 132.

³⁵ G. Graham, V. Rodrigues, Portugal, in: *Aviation Law*, op. cit., p. 138.

³⁶ *Ibidem*, p. 139.

with foreign licence that use a Portuguese airport or fly over national airspace when no international convention or treaty containing rules of liability applies³⁷.

In South Africa an independent Aviation Safety Investigation Board investigates the causes of aircraft accidents³⁸.

According to provisions of the South African Maritime and Aeronautical Search and Rescue Act, 2002, and the Chicago Convention, the South African Police Service shall have rights to prior access to any scene of an aircraft accident or incident.

In Spain air transport is regulated by European and domestic rules. The Ministry of Development, through the Spanish Air Safety Agency (Agencia Española de Seguridad Aérea – AESA) governs air safety³⁹. The investigation of accidents shall be dealt with by the civil aviation authorities⁴⁰.

Switzerland has adopted Regulation /EC/ 216/2008 as the principal piece of Swiss aviation safety legislation, and has implemented Safety Managements Systems as provided for in ICAO Annexes 6,11,14⁴¹. Annex 6 is only applicable to commercial operations: passenger and cargo. Air accidents are governed by the Ordonance on Aviation Accidents and Severe Incidents.

In Taiwan, the principal piece of legislation which governs air safety is the Civil Aviation Act. Air safety is regulated separately for commercial, cargo and private carriers⁴². Have been issued the Regulation Governing Flights Operations with guidelines for flight operations divided into above three categories. Upon the Aviation Occurrence Investigation Act, the Aviation Safety Council covers such item.

United Kingdom legislation on air safety is contained in the Civil Aviation Act 1982 and the Air Navigation Order 2009 and in European legislation having direct application in the UK concerning safety aspects of aircraft, operators, maintained and design organisations and personnel in commercial transport⁴³. In UK the Air Accidents Investigation Branch (AAIB) is responsible for the investigation of civil aircraft accidents and serious incidents. The AAIB has the power to require the detension and preservation of evidence and has powers to enquiry. Also assistance of the local policy is routinely available. Reports into civil air accidents are published.

In the USA air safety is administrated by the Federal Aviation Act (FAA). Upon “Federal Aviation Regulations” (FAR) air carrier safety issues are divided in accordance with the size and type of aircraft, rather than the type of operator⁴⁴. Foreign carriers are regulated under Part 129 the FAR, though this does not supplant the carrier’s homeland safety regulations⁴⁵. In the USA the National Transportation Safety Board (NTSB) has primary jurisdiction over all aircraft accidents occurring in U.S. territory. It also provides investigation assistance when an accident involving a U.S. air carrier or U.S. citizens occurs outside the United States. The HTSB volunteers services to assist foreign

³⁷ *Ibidem*.

³⁸ Ch. Christodoulou, South Africa, in: *Aviation Law*, op. cit., p. 146-147.

³⁹ A. López-Ibor Aliño, P. Stöger Pérez, Spain, in: *Aviation Law*, op. cit., p. 156-157.

⁴⁰ *Ibidem*, p. 157–158.

⁴¹ S. Erbe, Switzerland, In: *Aviationn Law*, op. cit., p. 164-165.

⁴² P. Lin, M. Yu, Taiwan, In: *Aviation Law*, op. cit., p. 169-170.

⁴³ A. Meneghetti, Ph. Perrota, United Kingdom, in: *Aviation Law*, op. cit., p. 188-189.

⁴⁴ M.W. Atwood, A.I. Mendelsohn, USA, in: *Aviation Law*, op. cit., p. 200.

⁴⁵ *Ibidem*.

accident investigation units in crashes involving foreign air carriers that occur outside the United States, even where U.S. passengers or interests are not involved. The FAA and the Department of State assist the NTSB in accident investigations, as a liaison between the NTSB and families of crash victims and foreign governments. Also the FBI and other criminal units may become involved in the investigation if it appears that criminal activity contributed to the accident⁴⁶. The USA federal law also requires that U.S. and foreign air carriers travelling to the United States have an “Aviation Disaster Family Assistance Plan” in place, which carriers must file with the U.S. Department of Transportation in order to receive economic authority to operate within or to the United States. All hearings and reports of NTSB are open to the public (except that under the U.S. Freedom of Information Act). The accident reports are published on NTSB’s website (www.ntsb.gov).

3. Aviation disputes – civil and criminal cases in selecting countries

In Austria, aviation disputes are handled by the general civil and/or criminal courts⁴⁷. In civil matters, the competent court generally depends on the value of the dispute. There are 141 district courts and 20 regional courts in Austria. In Vienna, there is a special commercial district court and a commercial regional court for commercial matters. Criminal cases are also tried before the same district and regional courts.

In Bolivia, due to the amounts that surround an aircraft lease agreement, the appropriate court will be civil-commercial court. International arbitration, if established in the lease agreement, can also be applied and the arbitral award can be enforced in the Plurinational State of Bolivia⁴⁸. The jurisdiction with criminal courts is left in cases related to major aviation accidents, unlawful acts on board an aircraft or drug trafficking or smuggling of merchandise.

In Brazil there is distinction regarding the courts in which civil and criminal cases are brought. The judiciary system is a dual system incorporating federal and state courts, as well as regular and specialised courts⁴⁹. Aviation liability and commercial disputes are usually handled by state civil courts. If the dispute involves the Civil Aviation Agency or a State owned company, such as the airport administrator, litigation must be filed before the federal courts where it can take up two decades to reach a final decision. Criminal disputes arising from major aviation accidents, unlawful interference on board and (or cargo) drug smuggling are handled by federal criminal courts.

In the Czech Republic aviation disputes are heard and decided before civil courts. Where non-pecuniary performance is the subject of dispute, irrespective of the value of the dispute, district courts are the courts of first instance. Criminal courts hear cases involving “criminal aspect” of any nature. The plaintiff is always a prosecutor acting on behalf of the State. Civil and criminal proceedings can run currently⁵⁰.

In Germany there are no special courts for aviation disputes. Civil claims have to be brought before civil courts. Administrative proceedings have to be

⁴⁶ *Ibidem*, 200–201.

⁴⁷ M. Flitsch, I. Gogl, Austria..., *op. cit.*, p. 20.

⁴⁸ S. Salazar-Machicado, I. Salazar-Machicado, Bolivia, in: *Aviation Law...*, *op. cit.*, p. 27.

⁴⁹ J. Costa, G. Lasavia, Brazil, in: *Aviation Law...*, *op. cit.*, p. 34.

⁵⁰ K. Kramařk, R. Štásny, Czech Republic, *op. cit.*, p. 53.

brought before the relevant administrative courts. Criminal proceedings have to be brought before criminal courts⁵¹.

In Greece, the courts which are appropriate for aviation are the Greek civil courts: County Court, Single-Member Court and Multi-Member Court-as competent in various pecuniary values of the object at dispute. Summary proceedings concerning issues on possession and ownership are heard exclusively by the County Court. The criminal jurisdiction is provided by the general provisions of the Greek Code of Criminal Procedure⁵².

In Indonesia the appropriate courts would not depend on the value of the dispute itself. The appropriate courts would be: the general court, which includes the District Court, High Court and Supreme Court – for disputes, and the Commercial Court for bankruptcy and intellectual property rights. There is no distinction of courts in Indonesia between civil and criminal cases as both go through the General Courts, but cases are differentiated between civil and criminal cases⁵³.

In the Mexico, in case of lawsuit it is fundamental to identify the nature of the dispute: civil, commercial, or administrative⁵⁴. According to the Airports Law and its regulations, federal courts are competent with regards to: a) Acts and contracts with respect to the rendering of airport, supplementary and commercial services, b) Construction, administration, operation and functioning of civil airports.

Commercial and civil proceedings can be heard and solved by federal or state courts. Jurisdiction is determined by the domicile of the defendant. The parties may freely agree on the appropriate jurisdiction. Federal courts are competent regarding aviation disputes. The value of the dispute is not relevant for federal jurisdiction.

In the Portugal there are no specific courts for aviation disputes, which are settled in the courts: both civil and criminal. Civil cases can also be brought to arbitral tribunals when the parties have agreed to do so. Criminal cases can also be subject to a system of criminal mediation⁵⁵.

In the Spain⁵⁶, the courts where a dispute is held depend on the matter, and not on the value of the dispute. For the cases of Insolvency and passenger rights, the competent courts are the Commercial Courts. In relation to any civil air claim the civil courts of first Instance are competent. In criminal cases are competent the Criminal Courts of Examination. Civil responsibility arising from criminal offences can also be claimed together with the criminal complaint. Resolutions of the Governmental or Regulatory Bodies can be challenged in front of the Administrative Courts of Justice.

In the Ukraine⁵⁷, aviation disputes can be considered by common commercial or administrative courts depending on the nature of the case and the identity of claimants and the respondents. The choice of a competent court does not depend on the dispute value.

⁵¹ H. Bürskens, U. Stepler, Germany, op. cit., p. 67.

⁵² B. Smyrniou, Greece, op. cit., p. 73.

⁵³ T. Bakker, Dinasti Brian Harahap, Indonesia, in: *Aviation Law*, op. cit. p. 81.

⁵⁴ C. Chacón, Mexico, op. cit., p. 106-107.

⁵⁵ G. Graham, V. Rodrigues, Portugal, op. cit., s. 140.

⁵⁶ A. López-Ibor Aliño, P. Stôger Pérez, Spain, op. cit., p. 159.

⁵⁷ A. Vlasjuk, O. Demyanenko, Ukraine, in: *Aviation Law*, op. cit., p. 184.

In the USA⁵⁸ civil claims regarding commercial aviation disputes can be filed in United States federal court where the complaint presents a federal question, or there is diversity jurisdiction based on the amount in controversy and the residences of parties. Most commercial civil aviation disputes, can be heard in state court or in federal court if the diversity test is met. In dispute because of the bankruptcy of a party, such a claim would be addressed in federal bankruptcy court. In case of breach of contract, personal injury, and property damage claims may be filed in state court, as long as they are not preempted by federal legislation or international treaties to which the United States is a party.

In the USA criminal charges are rarely filed in the context of commercial aviation disputes, except occasional where there has been illegal share trading for publicity held airlines or aircraft/parts manufacturers or falsification of records. Criminal charges are be filed in situations involving passenger interference with the flight crew or aircraft, terrorist acts, corporate malfeasance resulting in injury or death, or export of aircraft or their parts in violation of the United Nations export control or foreign sanctions law.

4. *Final remarks*

In the recent decade there have been a number of meaningful contributions in terms of legislation and legal support to the industry and the aviation safety.

The 2001 Cape Town Convention promoted by the Aviation Working Group was a necessary enhancement to the systems of protecting interests in aviation assets across different and competing applicable jurisdictions.

The European Union Regulation 261/2004 intervened with a balancing instrument that is intended to provide clearer passenger rights in the event of significant delays and cancellation in flights and denied boarding generally.

The European Union Emissions Trading Scheme (EU-ETS) was introduced in the European Union to help greenhouse gas emissios reduction under the Kyoto Protocol, as operates in 30 countries, and it now includes the aviation sector.

The nature of regulatory developments in recent times seek to deal with the negative impact of aircraft and passengers. Aviation lawyers can represent the interests different airlines and aircraft operating models and requirements, advising inter alia on intellectual property protection, resolving disputes in a variety international fora as well as on corporate structuring, and aeropolitical and regulatory matters in air law legislation practical cross-border insight into contemporary aviation law presents both similarity and difference in national legislation which govern air safety and regimes applies to air accidents, systems and procedures which need to be adhered to (administrative, civil and criminal).

Criminal law issues in air law transportation were examined by: the Tokyo convention, adopted in 1963, the Hague Convention of 1970 and the Montreal Convention of 1971. Both the Hague and Montreal Conventions provide for the right and obligation of each contracting state to take necessary measures to establish jurisdiction over criminals when found in their territory as of acts of wviation terrorism. However the Montreal Convention did not allocate jurisdiction to the state in whose territory the offence had direct consequence.

⁵⁸ M. W. Artwood, A.I. Mendelsohn, USA, op. cit., p. 202.

In 2010 an ICAO Diplomatic conference in Beijing adopted: the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the Supplementary Protocol to the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, both as improving aviation security and criminalizing the 9/11 offences.

Contemporary aviation law demonstrates that the concept of state sovereignty over airspace and of the aviation safety and security is a subject to ongoing evolution⁵⁹.

Recently in Poland have been discussed topical issues on the aviation safety and management of air traffic.

As role of avionic system in safety providing, upon modern ideas in this field, have been presented inter alia: design of safest avionic systems based on the principles of rational control systems, the diagnostic of operationability and experimental researches⁶⁰.

Precision approach with GNSS and bird hazard management in the aspect of air traffic management includes operation using: Aircraft-Based Augmentation System (ABAS), Satellite-Based Augmentation System (SBAS) and Ground – Based Augmentation System (GBAS)⁶¹.

In the Polish aviation have been used: satellite navigation systems for air traffic management and parameters for military air traffic control system.

Bird hazard management of European airports consists of: regulations and measures to mitigate the bird threat, both active and passive management and supportive measures.

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⁵⁹ M. Polkowska, State Sovereignty in the Airspace: An Old Notion in a New Reality, *Annals of Air and Space Law – Annales de Droit Aérien et Spatial*, Vol. XXXVI, Montreal, pp. 579-598.

⁶⁰ A. Kulik, K. Dergachov, Aviation safety. Role of avionic system in safety providing, in: *Some Actual Issues of Traffic and Vehicle Safety*, Edited by Aleksander Śładkowski. Monograph. Faculty of Transport. Silesian University of Technology, Gliwice, 2013.

⁶¹ R. Fellner, A. Fellner, M. Hromádka, Precision approach with GNSS and bird hazard management in the aspect of air traffic management, in: *Some Actual Issues of Traffic...* op. cit.