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COVID-19 AS A FORCE MAJEURE CIRCUMSTANCE IN AIR LAW CONTRACTUAL RELATIONS

Transport legal relations, inter alia, relations in the field of the Air Law are characterized by daily interaction of various economic entities which is further expressed in different types of agreements, such as: charter agreement, forwarding agreement, rental agreement, aircraft leasing agreement, etc.

The raging pandemic and its impact on the aviation industry as well as on the overall world economy have necessitated the identification of prospective remedies in case of impossibility to perform the contractual obligations. The insertion of force majeure clause is one of the possible ways to safeguard the rights of business sector representatives and their counterparties, as it aims to ensure liability exemption of a party to a contract, which is unable to fulfill it due to external circumstances beyond the parties' control.

It is worth nothing, that the Civil Code of Ukraine avoids this concept at all, defining in Art. 617 contingency or insuperable forces, as grounds for releasing from responsibility for the breach of obligation [1]. The Commercial Code of Ukraine also does not provide any definition but in Art. 218 it is stated that insuperable force is an extraordinary and unavoidable circumstance under these conditions of economic activity [2].

The term "force majeure" appears in the Law of Ukraine "On Chambers of Commerce and Industry in Ukraine". According to the second part of Art. 14¹ of the mentioned Law, force majeure situations

are extraordinary and irreversible circumstances which objectively make it impossible to fulfill the contract (agreement) or other obligations under legislative prescriptions [3]. It could be concluded that in conformity with the Ukrainian legislation, the concept of the "force majeure" and the "insuperable force" are identical.

The question whether COVID-19 is a force majeure can be answered on the basis of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)", under which the Verkhovna Rada of Ukraine completed the list of circumstances that may be considered force majeure, indicating among other things, the quarantine imposed by the Cabinet of Ministers of Ukraine [4].

Although the term "COVID-19" is absent in this expression, the words "epidemic" / "pandemic" and "quarantine" cover it. Considering that the World Health Organization recognized the spread of COVID-19 as a pandemic on 11 March 2020 it is more likely that such clause will be applied. As for European countries, COVID-19 is not qualified as a force majeure at the legislative level there.

Some scholars, including Siniukov N.V., have pointed out that force majeure situation should be unpredictable. This trait, among others, is also set out in paragraph 6.9 of the Regulations of the Chamber of Commerce and Industry of Ukraine (CCI). Regarding contracts concluded currently and in the light of recent events, an outbreak of the virus or its consequences cannot be considered unpredictable, as it is widely reported and highly expected. People are well-informed which is in some way does not meet the requirements of the Regulations.

In any case, it is important to note that a party wishing to invoke force majeure must prove that its inability to perform the contract was caused exactly by the restrictive quarantine measures imposed through COVID-19. As a general rule, it can be proved by obtaining the appropriate certificate of the CCI. Causal link will play a key role in solution to this issue. Furthermore, it should be demonstrated that there were no reasonable steps which a party could take to mitigate or prevent the effects of force majeure.

It should be added that the circumstances of force majeure cannot include business risks, such as breach of obligations by the debtor's counterparties, lack of money/goods/ raw materials on the market as well as financial economic crisis, currency rate fluctuations or devaluation of the national currency, unless otherwise expressly provided in the terms of the agreement (contract). If there are other reasons that anyway exist, a force majeure argument related to COVID-19 would be unsuccessful.

It should be borne in mind that quarantine, like any other force majeure circumstance, does not automatically excuse business aviation representatives from their duties and responsibilities but it can help to reduce the burden of obligations to some extent.

So, in Ukraine COVID-19 is recognized as a force majeure circumstance. This significant move by the Parliament is aimed to support the aviation industry, help businesses to avoid fines and debts to counterparties that in turn will lead to reduction of bankruptcy. In the absence of misuse such a mechanism is quite effective and allows companies to keep afloat in a very difficult time.

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АНАЛІЗ НАЦІОНАЛЬНОГО ЗАКОНОДАВСТВА У СФЕРІ ПОВІТРЯНИХ ПЕРЕВЕЗЕНЬ

Повітряні перевезення є одним із найбільш затребуваних способів транспортування вантажів та людей між різними країнами та континентами. Вони вигідно відрізняються від перевезень іншими видами транспорту за багатьма показниками, поступаючи лише в обсягах перевезень. Доставка вантажів відбувається сьогодні в рекордно короткі терміни. Таким чином, першим і головним плюсом повітряних вантажоперевезень є швидкість, не доступна при доставці наземним або водним транспортом. Оперативність, із якою доставляються вантажі цим способом, може бути незамінна при