

Jurisdiction over the aircraft

The paper is devoted to the study of the problem of collecting compensation for flight cancellations or delays. Based on the analysis of the norms of Ukrainian legislation, European Union Law and judicial practice, conclusions are drawn and an algorithm of actions in such situations is proposed.

Jurisdiction over aircraft is the right of the administrative and judicial authorities of the state to decide cases of offenses related to the operation of aircraft or actions on board these vessels.

There are three main principles of jurisdiction for actions on board aircraft:

- territorial (the principle of applicability of the law of the state on the territory of which the aircraft is located). The territorial principle follows from the sovereignty of a state whose power extends to its entire territory. According to Article 2 of the Constitution of Ukraine, its sovereignty extends to the entire territory belonging to the state, which exercises within its borders the full and exclusive powers provided for by law, in particular, coercion, that is, the establishment and maintenance of law and order, including the activities of public authorities of another state on its territory. Guided by the law of Ukraine "on the state border of Ukraine" of 04.11.1991 No. 1777-XII (as amended on 03.07.2020), the state border of Ukraine is a line and vertical surface running along this line, which define the boundaries of the territory of Ukraine of land, waters, subsurface, and airspace.

- national (principle of applicability of the law of the state of registration of an aircraft). In accordance with Articles 17, 18, and 20 of the 1944 Chicago Convention, aircraft have the nationality of the state in whose register they are listed. Each aircraft must have identification marks that determine its nationality. The fact of registration of a vessel is of great legal importance and therefore simultaneous registration of an aircraft in two states is prohibited.

- mixed (combined, combining to a certain extent the first two principles). The right to exercise jurisdiction over the state of registration of the aircraft and the state in whose airspace the flight is carried out is set out in the Tokyo Convention of 1963 on offences and certain other acts committed on board the aircraft. Article 3 of this convention defines the jurisdiction of the state of registration in the most general form. Article 4 defines the jurisdiction of the state in whose airspace the flight takes place.

Aircraft flying over the high seas are under national jurisdiction. That is, during flights over the open sea, the aircraft registration state exercises jurisdiction over this vessel for the entire flight. Any aircraft located in this airspace is inviolable and independent of the authorities of any state other than the one where it is registered, and is subject only to its laws. The exception is acts of air piracy committed in international airspace over the high seas.

Aircraft that have landed on a foreign territory fall under the jurisdiction of the landing state. Aircraft located in the airspace of a foreign state may be subject to the jurisdiction of that state or the state of registration of the aircraft.

Jurisdiction over aircraft is divided into criminal and civil and is regulated by domestic and international law. Separate rules of international law regarding the jurisdiction of states over aircraft are contained in the Warsaw Convention for the unification of certain rules concerning international air transport of 1929, the Rome Convention on compensation for damage caused by a foreign aircraft to third parties on the surface of 1952, the Tokyo Convention on crimes and some other actions committed on board an aircraft of 1963. The Hague Convention for the suppression of unlawful seizure of aircraft of 1970, the Montreal Convention for the suppression of unlawful acts against the safety of Civil Aviation of 1971, etc.

In accordance with Ukrainian legislation and international treaties, Ukrainian civil aircraft are subject to the jurisdiction of Ukraine when they are located within the territory of Ukraine or in international airspace.

Thus, according to Article 12 of the Air Code of Ukraine, when an aircraft performs a flight in international space, the state in which the aircraft is registered exercises jurisdiction over it throughout its flight. Being in international airspace, the aircraft is inviolable and independent of any state, except for the one in which the aircraft is registered, and complies with and operates only on the basis of its laws.

It should also be noted that under the convention on crimes and certain other acts committed on board an aircraft, crimes committed on an aircraft belonging to a state party to the Convention, other than a vessel used in the military, customs and police service, for the purpose of extradition, are considered as having been committed on the territory of the aircraft registration state. That is, in certain cases, the criminal jurisdiction of Ukraine also applies to crimes committed on board non-military air facilities registered in Ukraine, which are in flight over the territory of other states. Exceptions to this rule under the said Convention are cases where the crime:

- a) has consequences on the territory of another state;
- b) committed by a citizen of this state or a person permanently residing in its territory or in relation to such persons;
- c) directed against the security of this state;
- d) is a violation of the rules of flight or maneuvering of aircraft in force in this state;
- e) the exercise of jurisdiction is necessary to secure the obligation of that state under a multilateral international agreement.

References

1. The Constitution of Ukraine, adopted at the fifth session of the Verkhovna Rada of Ukraine on June 28, 1996. - Access mode: <http://zakon2.rada.gov.ua/laws/show/254к/96-бп>
2. Air code of Ukraine of May 19 2011. No. 3393-VI // Information of the Verkhovna Rada of Ukraine. - 2011. - No. 48-49. - Article 536.

3. Convention on Crimes and certain other Acts committed on Board Aircraft, of September 14, 1963. - Access mode https://www.un.org/ru/documents/decl_conv/conventions/crimes_ aboard.shtml.

4. Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 // - Access mode https://www.un.org/ru/documents/decl_conv/conventions/aircraft_seizure.shtml

5. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971. - Access mode https://www.un.org/ru/documents/decl_conv/conventions/aviation_security.shtm.