

board and the safety of civil aircraft", against the use of weapons, without prejudice to the other value of fundamental importance for the State: the respect of its sovereignty. That is why the decision of the Contracting States to "take appropriate measures" to avoid violation of the airspace of other States. On the other hand the State which violates the article 3 bis, incurs international responsibility and you have to remember that the law prohibits the employment of the use of force as a general principle.

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THE RIGHTS OF AIR PASSENGERS PURSUANT TO THE REGULATION (EC) NO 261/2004

More and more people travel for business or for leisure. The same statement values also for travelling by airplanes. Different circumstances and events may cause big troubles and inconveniences to passengers, especially to passengers in air traffic. In order to reduce troubles and inconveniences of passengers in air traffic The European Parliament and The Council of The European Union have adopted Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 [1].

The Regulation (EC) No 261/2004 that is currently in force consists of a relatively extensive preamble and 19 articles. The preamble contains some statements which deserve our attention. The European Parliament and the Council state that action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.

The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market. The protection accorded to passengers departing from an airport located in a Member State should be extended to those leaving an airport located in a third country for one situated in a Member State, when a Community carrier operates the flight.

Regulation contains 19 articles. On the basis of Article 1 of the Regulation this Regulation establishes, under the conditions specified herein, minimum rights for passengers when:

- (a) they are denied boarding against their will;
- (b) their flight is cancelled;
- (c) their flight is delayed.

When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

If an insufficient number of volunteers come forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9 [2].

In case of cancellation of a flight, the passengers concerned shall:

(a) be offered assistance by the operating air carrier in accordance with Article 8; and

(b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless they are informed of the cancellation on time [3].

When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove

that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier [4].

When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

(a) for two hours or more in the case of flights of 1500 kilometres or less; or

(b) for three hours or more in the case of all intra-Community flights of more than 1500 kilometres and of all other flights between 1500 and 3500 kilometres; or

(c) for four hours or more in the case of all flights not falling under (a) or (b),

passengers shall be offered by the operating air carrier:

(i) the assistance specified in Article 9(1)(a) and 9(2); and

(ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket [5].

Regulation (EC) 261/2004 entered into force on 17 February 2005. This Regulation is binding in its entirety and directly applicable in all Member States [6].

In spite of the rights of air passengers determined in the Regulation (EC) 261/2004, I believe that protection of air passengers is not sufficient. It is well known that air carriers very often (or even always) sell more air tickets than there are seats in the airplane. They count on the fact that relatively seldom all the passengers who have bought air tickets appear at the check - in. If all passengers who have bought air ticket do not appear at the check - in air company earns extra profit because they have sold more tickets than there are seats in the airplane. But in the case that more passengers than there are seats on the airplane appear at the check - in, operating air carrier simply deny boarding of determined number of passengers. Operating air carrier immediately compensate such passengers in accordance with Article 7 and assist them in accordance with Articles 8 and 9 of the Regulation. No other sanction for such air carrier is provided. I am convinced that denial of boarding should be prohibited except in the cases of reasonable grounds for denial, such as reasons of health, safety or security or inadequate travel documentation.

I believe that the protection of air passengers should be improved because they are weaker contracting party.

Literature

1. Regulation (EC) No 261/2004, Official Journal of the European Union L 046, 17/02/2004.
2. Article 4 of the Regulation.
3. Paragraph 1 of Article 5 of the Regulation.
4. Paragraphs 2, 3 and 4 of Article 5 of the Regulation.
5. Article 6 of the Regulation.
6. Article 19 of the Regulation.

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ОСОБЛИВОСТІ МІЖНАРОДНО-ПРАВОВОГО РЕГУЛЮВАННЯ АВІАЦІЙНИХ ПЕРЕВЕЗЕНЬ

В умовах бурхливого економічного розвитку та становлення Української держави міжнародні повітряні перевезення набувають все більшого значення, а тому правове регулювання транспортних відносин визнається вирішальним на сучасному етапі розвитку нашої держави. Актуальним питанням, зокрема, є міжнародно-правове регулювання повітряних перевезень, адже в умовах просування України на міжнародній авіаційній арені, дуже важливим є відповідність національного законодавства в цій галузі світовим стандартам.

Україна підписала основні міжнародні угоди, що регулюють договір перевезення вантажів та пасажирів авіаційним транспортом. У Конституції України сказано, що чинні міжнародні договори, згода на обов'язковість яких надана Верховною Радою України є частиною її законодавства (ст.9). У конституційних положеннях Закону України «Про міжнародні договори України» встановлено те, що за умови виникнення протиріч між положеннями українського законодавства та міжнародного договору, перевагу має останній [1].

Міжнародно-правова регламентація повітряних перевезень розвивається на базі загальних принципів міжнародного повітряного права, найважливішими з яких є: принцип повного суверенітету держави над її повітряним простором, принцип свободи польотів у відкритому повітряному просторі, принцип забезпечення безпеки міжнародної цивільної авіації, принцип національної юрисдикції над повітряними суднами та їхніми екіпажами та інші [2, с. 145].

Міжнародно-правове регулювання перевезень за допомогою повітряного транспорту бере свій початок з Паризької конвенції про повітряну навігацію 1919 року, якою вперше було закріплено принцип