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Legal Evolution of Carrier Liability in International Aviation Conventions

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Abstract: In the current global aviation system, the safety, reliability, and legal protection of passenger and cargo transportation by air are among the top priorities. In this context, the institution of carrier liability holds a central position. The carrier's liability determines the procedures for compensating damages that occur during air transportation. This article analyzes the stages of legal development of this institution within the framework of international aviation conventions. The evolution from the Warsaw system to the Montreal Convention is thoroughly examined, along with the carrier liability mechanisms based on the provisions of the Guadalajara Convention and the Montreal Protocols of 1975.

Keywords: Passenger, carrier, damages, Warsaw Convention, Hague protocol, Montreal Convention, air crash, liability.

Introduction: In the 21st century, international air transport is rapidly developing as an integral part of the world economy and social relations. According to the World Bank, more than 4.7 billion passengers were transported by air worldwide in 2022. In 2024, the total annual air traffic volume increased by 10.4% compared to 2023. This is 3.8% higher than the pre-pandemic (2019) level. Domestic transportation increased by 5.7%. This volume not only increases commercial profit but also adds to the complexity of legal relations. In this context, clearly defining carrier liability in passenger and baggage transportation contracts remains a pressing issue in the international legal system. International aviation law aims to regulate relations between carriers and passengers, with its main task being to ensure a safe, stable, and fair transport system. By establishing carrier responsibility, states protect citizens' rights, foster a culture of safety, and achieve transparency in commercial practices.

METHODS

The study employed methods of comparative legal analysis, a systematic approach, historical and legal analysis, as well as interpretation of regulatory legal acts. International conventions, their protocols, rules of international organizations (ICAO, IATA), national legislation, as well as the scientific views of foreign and national legal scholars were used as the foundation for this research.

RESULTS

The article highlights the legal evolution from the Warsaw system to the Montreal Convention, emphasizing improved liability frameworks, SDR-based compensation, and broader protection of passenger rights—though ambiguities on non-material damage and legal uniformity still persist globally.

ANALYSIS

The issue of liability in passenger and baggage transportation is primarily based on the principle of damage compensation. Any transport service involves inevitable risks, and it is necessary to develop a mechanism for their legal compensation. International conventions regulating this field serve as the main legal foundation in this regard. Within the framework of these conventions, international transportation is regulated, but it is not termed international due to the composition of its subjects. Otherwise, for example, the legal status of passengers on a single aircraft would be subject to different regimes, they would have more or fewer rights in relation to each other, and the carrier

would have to consider the nationality of each passenger. This would undoubtedly complicate and confuse the legal classification of international transport relations. Unlike other civil law contracts, the peculiarity of the foreign element in international air carriage contracts lies in its manifestation when crossing the border of a foreign state (with the destination specified).

Thus, air transportation is considered "international" when the destination and place of departure are located in the territories of different states, or when they are located within the territory of one state but are carried out with an intermediate landing in the territory of another state (i.e., if such a landing is stipulated in the contract).

At one time, the liability of international air carriers was not regulated by interstate agreements, causing national legal systems to apply conflicting and unequal conditions. This hindered the international development of air transport. Therefore, since the beginning of the 20th century, states have developed a system of international conventions to standardize procedures for ensuring transport safety and compensation for damages.

Attempts to develop unified international documents in the field of air transport began in the 1920s. After World War II, a trend of rapid development in civil aviation became clearly visible worldwide. International flights required a clear and unified legal framework. As a result, the Convention on International Civil Aviation was adopted in Chicago in 1944, and this convention played a crucial role in international air traffic. The convention also established the International Civil Aviation Organization (ICAO), whose unique characteristics and activities were outlined.

The main set of documents defining airline liability in international air transportation is called the Warsaw system. This system:

In addition to the Warsaw Convention of 1929,

Includes the Hague Protocol of 1955 (which entered into force in 1963),

Convention supplementing the Warsaw Convention for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, signed in Guadalajara on September 18, 1961 (known as the Guadalajara Convention),

The Guatemala City Protocol of 1971,

The four Montreal Protocols of 1975 (the Guatemala City and Montreal Protocols have not entered into force) are also part of it.

The Warsaw Convention of 1929, as its name suggests, applies to international air carriage and is considered the primary document that first systematized aviation carrier liability on an international scale. According to paragraph 2 of Article 1 of the Convention, "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination are situated within the territories of two States or within the territory of a single State if there is an agreed stopping place within the territory of another State. Carriage between two points within the territory of a single State without an agreed stopping place within the territory of another State is not international carriage. If stopping is provided for in the territory of another state, and this state is not a party to the Convention, such transport shall be recognized as international.

The main objective of the Convention is to strike a balance between alleviating the liability of air carriers and simultaneously protecting passengers' rights. The Warsaw Convention standardized the regulations concerning transport documents. The provisions related to carrier liability are encompassed in Articles 17-30 of the Convention. It is particularly noteworthy that, according to Article 17 of the Warsaw Convention, the carrier is liable for a passenger's death, injury, or any other bodily harm if the accident causing the damage occurred on board the aircraft or during passenger embarkation or disembarkation. As per Articles 17-19, the air carrier is held responsible for damages resulting from the destruction, loss, or damage of registered cargo or baggage, as well as for delays in the air transport of passengers, baggage, and cargo. If liability arises due to the air carrier's fault, the burden of proving the presence or absence of fault falls on the carrier. However, the carrier is exempted from liability if it can prove that it took all possible measures to prevent the damage or that it was impossible to take such measures. Notably, there is no mention of the carrier's liability for non-material damages. The general statute of limitations is set at 2 years, and the issue of determining the court competent to hear cases of damage has been resolved.

Thus, the main achievement of the Warsaw Convention was the unification of the rules regarding air carrier liability. In this case, clearly defined norms of the carrier's liability limit towards passengers, established on the basis of international treaty provisions or through insurance, fully correspond to the economic guarantees of passengers and increase confidence in the carrier.

Minor or major accidents can occur multiple times during travel, but incidents that confirm the air carrier's

liability are very rare. This is because only events that meet the criteria established by the Convention are recognized as accidents. Foreign judicial practice has developed the following approaches to defining the concept of "accident" in Article 17 of the Warsaw Convention. In particular, in the Air France v. Saks case, the U.S. Supreme Court ruled in 1985: "Liability under Article 17 of the Warsaw Convention arises only if the damage to the passenger is caused by an unexpected or unusual event or happening that is external to the passenger. This definition should be applied, with appropriate modifications, to all circumstances of passenger injury assessment".

According to the provisions of the Warsaw Convention, only damage caused to the passenger, that is, the person who concluded the carriage contract, is compensated. Harm or damage caused to a passenger without a ticket is compensated based on the general rules of civil liability applied, taking into account the conflict of laws norms of the respective state. When transporting passengers, the carrier's liability for each passenger is limited. These restrictions do not apply if it is proven that the damage or harm was caused intentionally or through gross negligence by the carrier, its employees, or agents within the scope of their official duties.

It must be acknowledged that the Warsaw Convention was a revolutionary document for its time. It was accepted as a compromise solution in balancing passenger and commercial interests. However, with inflation and the increase in transport volume, its limits no longer meet modern requirements. Through the creation of additional protocols and conventions, a number of additions and amendments were made to the text of the 1929 Warsaw Convention.

The Hague Protocol, adopted in 1955, partially updated the Warsaw Convention and increased the limits:

- Up to 250,000 gold francs per passenger (double the amount under the Warsaw Convention).
- It maintained baggage and cargo limits at around 250 francs/kg.

The purpose of the Protocol is to adapt previous limits to economic growth and further clarify the legal relationship between the carrier and the passenger. The Hague Protocol was evolutionary in nature and modernized the limits in the Warsaw system, while preserving the basic system - limited liability and the possibility of exemption from fault (force majeure).

The Republic of Uzbekistan has joined this Warsaw system: in 1997, it ratified the Warsaw Convention and the Hague Protocol.

The 1971 Guatemala Protocol introduced the term "personal injury" instead of "bodily injury" in the Warsaw Convention. This change was intended to expand the carrier's scope of liability, covering not only physical but also psychological and emotional damages. However, the term "personal injury" has not gained widespread acceptance due to its varying interpretations across legal systems. States with Romano-Germanic legal systems, in particular, faced difficulties in clearly understanding this concept. Even in the Russian translation, an accurate equivalent for this expression was not found, resulting in a return to the term "physical harm." Due to these ambiguities and other legal shortcomings, the Guatemala Protocol did not enter into force.

As previously noted, the Warsaw Convention applies to contractual relations concerning the international air transport of passengers, baggage, or cargo. In this context, the question of who is considered the "carrier" within the framework of these transportations, i.e., who should be the subject of liability, is of crucial importance. However, the Warsaw Convention does not clearly define the concept of "carrier" and does not clarify the status of other persons who are not parties to the contract, namely those performing the actual transport operation.

Consequently, the legal gap in the Convention - especially in complex transport operations involving various air carriers (codeshare, interline), which are common in practice - has created difficulties in determining who bears responsibility. To eliminate these legal ambiguities and clearly delineate the institution of carriage, a separate international document - the Guadalajara Convention - was adopted in Guadalajara in 1961.

This convention officially established the legal distinctions between the "contracting carrier" and the "actual carrier." The contracting carrier is the entity that assumes the obligation of transportation and issues the ticket, while the actual carrier is the airline that actually performs the flight. The Guadalajara Convention regulated the basic rules regarding the limits of liability and claim procedures for these two entities, thereby consolidating the clear legal status of participants in international air transportation.

As acknowledged in foreign literature, travel agencies, tour operators, freight forwarders, charterers, and other individuals may be recognized as contractual carriers if they have not limited themselves to concluding a contract on behalf of a third party acting as an agent, sales manager, or employee, but have also assumed the obligation to carry out the transportation.

The Guadalajara Convention is a legal solution that aligns with the modern model of cooperative aviation,

protecting passenger rights in conflict situations. While strengthening consumer rights, it also clarifies the distribution of liability between carriers.

In addition to the Guadalajara Convention, the carrier's liability under international carriage contracts is also regulated by other international agreements. As mentioned above, the limited liability amount in the Warsaw Convention was doubled by the Hague Protocol. Nevertheless, by 1965, the US government, considering the updated liability limits insufficient, expressed its intention to withdraw from the Warsaw Convention, signed in 1929, and announced its withdrawal from the Convention effective May 15, 1966. However, this withdrawal plan was not implemented, as a compromise agreement - the 1966 Montreal Agreement - was signed between the authorized bodies of US civil aviation and major air carriers. According to this document, airlines agreed to increase liability limits in cases of passenger deaths, bodily injuries, or other damages by modifying their transportation conditions.

According to the new agreement, the liability amount established by airlines is set at $58,000 (excluding legal expenses) and $75,000 (including legal services). Notably, the term "personal injury" used in this agreement deserves special attention, as it is based on a conceptual notion widely interpreted in the Anglo-Saxon legal system.

This term, used in the 1966 Montreal Agreement, encompasses not only physical harm to the body but also damage to an individual's mental and emotional state. This has significantly broadened the scope of carrier liability in practice, making cases of psychological harm eligible for compensation as well. From this perspective, the Montreal Agreement demonstrates a more progressive approach that is closer to human rights principles compared to the Warsaw Convention.

It should be emphasized that the Warsaw system has become outdated from the standpoint of modern socio-economic requirements, with its liability limits set at very low levels. The multitude of documents related to the system (the Warsaw system comprises more than 10 documents) and the diverse range of participants complicate its practical application and hinder the uniform enforcement of the law. The prolonged nature of disputes, inconsistencies in contractual freedom, and liability standards prevent the Warsaw system from being recognized as an effective mechanism. The fact that some states have not fully ratified these documents can be explained by their desire to protect the interests of their airlines in the context of international competition.

According to the Montreal Protocols adopted in 1975, which are part of the Warsaw system, the franc Poincaré currency used in determining carrier liability in the 1929 Warsaw Convention was deemed obsolete. In its place, Special Drawing Rights (SDR - Special Drawing Rights) were introduced, which are stable in calculations and compatible with international financial transactions. Simultaneously, these protocols clearly formulated special rules limiting carrier liability in cases of emergencies (force majeure).

By the end of the 20th century, the Warsaw system was recognized as economically and legally outdated. Additionally, a need for a unified and modern system in the international aviation market emerged. Meanwhile, progress was made in establishing an interregional legal framework while modernizing the industry. For instance, in 1997, the European Union adopted Regulation No. 2027/97 of October 9, 1997, "On Air Carrier Liability for the Carriage of Passengers and Their Baggage," which promoted the equalization of air transportation between EU member states to domestic transportation. The main objective of this document was to achieve the application of legal procedures established by European Union legislation by increasing liability limits and updating the insurance system. When the new international Montreal Convention, aimed at worldwide recognition, was "born" in 1999, the Regulation underwent corresponding amendments.

On May 28, 1999, at the conclusion of the International Conference on Air Law (May 10-29, 1999) held in Montreal at the initiative of the International Civil Aviation Organization (ICAO), a new document was adopted - the "Convention for the Unification of Certain Rules for International Carriage by Air" - known as the Montreal Convention. This convention aimed to harmonize legal norms in air transport, incorporating international experience, especially in expanding carriers' liability limits.

As a result, the Montreal Convention now serves as the primary legal basis for international air transportation. The Convention entered into force on November 4, 2003. However, our country is not yet a member of it. The IATA organization supports Uzbekistan's accession to this convention and urges its prompt ratification.

Its main achievements are the increase in liability amounts in line with the modern economy: the concept of unlimited liability and the establishment of a two-tier liability system. In accordance with Article 21 of the Convention:

- First tier: liability up to 100,000 SDRs (approximately $135,000) regardless of fault (strict liability).

- Second tier: for damage exceeding this limit, the carrier is not liable if it proves that it was not at fault. (liability is not limited)

At the first level, according to paragraph 1 of Article 17 of the Convention, the carrier is liable for damage caused in the event of death or bodily injury to a passenger only if the incident that resulted in death or injury occurred on board the aircraft or during the process of embarking or disembarking. The amount of liability should not exceed 100,000 Special Drawing Rights (SDR) per passenger. During court proceedings, the conversion of these amounts into national currencies is carried out in accordance with the value of Special Drawing Rights as of the date of the court decision.

At the second level, in the event of a passenger's death or bodily injury, the carrier is not liable for damage exceeding 100,000 Special Drawing Rights per passenger if the carrier can prove:

- such damage was not caused by negligence or other wrongful act or omission of the carrier, its employees or agents; or

- such damage was caused solely by the negligence or other wrongful act or omission of a third party.

Due to its numerous achievements, the updated system has not yet lost its influence and currently encompasses 136 countries and the European Union. Notably, it can also be applied to relationships arising from transportation contracts where the cargo owners or passengers are individuals or legal entities from countries that have not ratified the Montreal Convention. For instance, if an Uzbek citizen flies from Canada or the USA to Russia, even though our country is not a party to the Montreal Convention, this Convention governs the relationship between the Uzbek passenger and the carrier that is a member of the Convention.

According to M.F. Baglaridu, the Conventions do not specify clear rules on what type of damage (property or non-property) the air carrier is liable for. Therefore, it is logical to consider that the air carrier is liable under the conventions for both property (material) and non-property (non-material) damage arising from passenger bodily injury, damage to luggage, loss, or destruction. On this matter, when some states (for example, Norway, Sweden) expressed opinions to specifically emphasize liability for moral harm in the Convention provisions, proposals from African countries were met with negative reactions. Due to the disagreement, it was agreed that the content in the Warsaw Convention text (Articles 17-18) should remain unchanged, while "physical injury" should be interpreted in a broad sense. It was decided to include psychological injuries associated with physical injuries and psychological injuries that significantly negatively impact the passenger's health even in the absence of physical injuries as physical injuries. However, in our opinion, there is no reason to deny N.N. Ostroumov's interpretation that "the Convention provided for the possibility of compensation in cases where psychological trauma caused harm to the passenger's health or physical injuries led to mental disorders in a person. " According to B.M. Khamrokulov, if a citizen of the Republic of Uzbekistan suffers moral damage as a result of international air transportation of passengers, baggage, and cargo, they can also demand compensation for the moral damage in court as a consumer.

Indeed, Article 24 of the 1929 Warsaw Convention and Article 29 of the 1999 Montreal Convention indicate that in cases of accidents in air transport - particularly passenger death or bodily injury, loss, damage, or delay of baggage or cargo - the legal conditions and compensation limits stipulated in the conventions regarding carrier liability must be applied. However, it is acknowledged as a shortcoming that these conventions do not encompass many pertinent legal aspects related to compensation for non-material damage - namely psychological, emotional, or moral harm that may arise during the transportation process.

Specifically, neither convention establishes criteria for determining whether affected individuals have the right to claim compensation for non-material damage. Furthermore, there are no clear mechanisms for assessing the subjective nature and extent of such damage, nor for determining the amount of compensation to be paid for it. In practice, this leads to claimants being left in a state of legal uncertainty.

Another significant shortcoming is that the text of these conventions does not clearly specify on what legal basis, that is, based on which national or international legal norms, issues arising during their application and not fully regulated by the conventions should be resolved. As a result, the tendency of courts to refer to national legislation or judicial practice in such matters hinders the formation of a unified international approach.

Nevertheless, despite such shortcomings, the Montreal Convention is adapted to the needs of modern aviation and ensures inflation adjustment through the SDR (Special Drawing Rights) system of the International Monetary Fund. The Montreal Convention provides stronger protection of passenger rights and eliminates the static nature of limits present in the previous Warsaw system. At the same time, it harmonizes the

principle of fault and the principles of risk distribution.

CONCLUSION

Analysis of the results shows that the evolution of carrier liability in international aviation conventions has undergone gradual improvement. While the Warsaw system played a historically significant role, its limitations - particularly the low liability limits and regulatory instability - caused practical problems. The Montreal Convention is the sole document aimed at addressing these shortcomings and represents a notable achievement with its two-tiered liability system, SDR-based limits, and coverage of non-material damages. However, some fundamental issues remain unresolved, such as precise criteria for compensation mechanisms and the subject of non-material damages. Uzbekistan has not yet ratified this convention. Therefore, considering that international obligations take precedence in case of discrepancies between domestic legislation and the state's international commitments, it is crucial to harmonize national legislation with international law requirements, develop aviation-related judicial practice based on international experience, and establish a legal framework that clearly defines carrier liability.

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