

CIVIL LIABILITY OF ENTITIES OTHER THAN AIRCRAFT OPERATORS FOR AVIATION ACCIDENTS

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INTRODUCTION

Contemporary aviation is a system of mutually bound entities whose activities are aimed at ensuring conditions for safe exploitation of aircraft used on a constantly growing scale. The specificity of aviation, advancing specialisation and technique development are forcing distribution of various functions. And although the key function is still attributed to an aircraft operator, the safety of aviation operations also depends on other entities. In a nutshell, aviation safety also depends on:

- 1) an aircraft, including all appliances used during a flight, which should be designed and produced in the way ensuring the required level of reliability and safety, for which designing and manufacturing entities are responsible;
- 2) the maintenance of an aircraft in continuing exploitability, for which an aircraft operator is responsible via organisations that manage exploitability and provide services;
- 3) airport and ground infrastructure, for which airport managers and entities providing ground handling services are responsible;
- 4) organisation of airspace and air traffic (including ramp traffic at airports), for which the state and institutions providing air traffic services are responsible;
- 5) air traffic services provided by designated institutions;
- 6) the level of training of aviation personnel, especially cabin crew, mechanics and field operation service staff, which is conducted in organisations training this personnel;

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7) the system of state supervision over the aviation sector activities, in particular the system of aviation equipment certification, organisations involved in aviation and the system of licencing aviation personnel.

The system of norms regulating the functioning of the aviation sector is rather complicated. It is multi-layered. Its legal acts originate from various sources (international, European Union and national ones), with a different subjective and objective scope of application.¹ Anyway, the basic role of aviation law is to determine such requirements, rules or procedures that ensure the safety of aviation operations,² also in the area of developing mutual relations between the aviation sector entities. Administrative regulations, taking into account past experience or technical progress, impose a series of requirements and obligations on entities involved in aviation. It is the way to minimise aviation accidents.

However, if an aviation accident occurs, the issue of liability arises, which means facing the consequences resulting from an accident. With regard to civil liability within the meaning of compensation for loss caused by an aviation accident, it is what first of all an aircraft operator incurs, i.e. an air carrier towards passengers in accordance with special rules laid down in international and the EU law,³ as well as an entity exploiting an aircraft towards the crew and third persons⁴ in accordance with special rules laid down in the national law, i.e. Act: Aviation Law.⁵ In both situations, we deal with obligatory civil liability insurance covering quite high minimum amounts.⁶ At the same time, this liability is as a rule independent of a fault. Grounds for holding an aircraft operator liable are rather obvious as an aircraft is under their control and supervision. This is an operator who is responsible for the technical state of an aircraft, and designates the crew that takes decisions concerning the flight performance. However, as it was mentioned above, contemporary aviation involves a considerable number of entities whose task is to ensure safe flights. It is especially evident in commercial air transport of passengers the operations of which are based on the expanded infrastructure of air traffic the functioning of which involves various entities and institutions.

Unlike in the legal situation of aircraft operators (the system of liability of an air carrier, the system of liability of a person exploiting an aircraft), in case of other entities there are no special regulations concerning their civil liability, both at the national and international level. That is why while looking for grounds for civil liability of entities that are not aircraft operators it is each time necessary to refer to the provisions of civil law that regulate liability in tort.⁷

¹ Żylicz, M., *Prawo lotnicze*, Warszawa, 2011, p. 26.

² Rembieliński, A., Olszewski, M., 'Niektóre zagadnienia odpowiedzialności cywilnej za wypadki lotnicze', *Nowe Prawo*, 1964, No. 7–8.

³ For more see Konert, A., *Odpowiedzialność cywilna przewoźnika lotniczego*, Warszawa, 2010.

⁴ For more see Konert, A., *Odpowiedzialność za szkodę na ziemi wyrządzoną ruchem statku powietrznego*, Warszawa, 2014.

⁵ See Articles 206 and 207 of the Aviation Law, Act of 3 July 2002, consolidated text, Journal of Laws of 2020, item 1970, as amended.

⁶ For more see Konert, A., *Ubezpieczenia lotnicze*, Warszawa, 2014.

⁷ Similarly Rembieliński, A., Olszewski, M., 'Niektóre zagadnienia odpowiedzialności cywilnej...', op. cit., p. 731.

Some of the above-mentioned entities are liable regardless of their fault. Firstly, the state supervision responsible for safety in civil aviation may be held liable for public authorities' activities that are unlawful (Article 417 et seq., Civil Code). Secondly, aircraft and aviation equipment manufacturers may be held liable for damage caused by a dangerous product (Article 449¹ et seq., Civil Code). Finally, if the activity of one of the above-mentioned entities is treated as a business activity within the meaning of Article 435 Civil Code, they can be held liable for risk. In other situations, liability of entities involved in aviation should be evaluated in the light of Article 415 Civil Code determining liability for damage caused by a culpable act.

From a practical point of view, suing an entity other than an aircraft operator is connected with extraordinary situations. It is due to the fact that an aviation accident is usually caused by many factors and circumstances. As a result, it is very difficult to prove that the only cause was action (omission) of only one entity involved in the event. That is why claims are filed to those entities whose liability is independent of a fault (an air carrier, an entity exploiting an aircraft). Then, it is not necessary to point out the cause of an aviation accident. The choice of an aircraft operator as an entity liable for damage is also advantageous because this liability is covered by obligatory insurance.⁸ That is why the aggrieved may claim compensation directly from an insurance company of the person exploiting an aircraft (Article 822 § 4 Civil Code). What becomes important, however, is the issue of the so-called legal recourse. An aircraft user or an insurance company, having paid compensation for damage caused by an aviation accident, will start looking for liability of the entities whose action or omission contributed to an aviation accident. Of course, it is also possible that in some situations the liability of an aircraft operator and other entities will be joint and several one. For example, the general rule of joint and several liability for damage caused by a prohibited act (Article 441 § 1 Civil Code) is determined in Article 207 (7) AL in accordance with which persons culpable for damage are held liable jointly with a person exploiting an aircraft.⁹

Finally, the article analyses potential legal grounds for liability of the entities and institutions other than an aircraft operator that may be addressees of the obligation to redress the damage resulting from an aircraft movement. The considerations focus on the objective aspect, i.e. on the type of activities that such entities are involved in. This allows for identification of certain special features connected with the given entity's possible liability for damages. The article does not deal with the issue of civil liability of natural persons, i.e. personnel involved in aviation operations, such as pilots, mechanics or air traffic controllers.

⁸ Regulation (EC) No. 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators, OJ L 138, 30.4.2004, as amended.

⁹ The provision lays down joint and several liability of the persons who caused an accident together with other entities referred to in Article 207(1)–(5) AL. Thus, it also concerns liability of a registered aircraft operator (paragraph 5), all persons who have the right to operate (use) an aircraft (paragraph 3), persons subordinate to a person exploiting an aircraft (paragraph 4) and persons unlawfully using an aircraft (paragraph 6).

1. LIABILITY FOR AIRCRAFT AIRWORTHINESS

The first group of entities that can be held liable for damages resulting from an aviation accident includes organisations the operations of which are related to the failure of technical defect provided that the defect had had impact on the accident.

First of all, it is the **liability of the manufacturer of an aircraft** (its parts or equipment) in a situation when a given appliance may be recognised as a dangerous product within the meaning of the provisions of the EU¹⁰ implemented to the national law (Article 449¹ et seq., Civil Code). An appliance understood as a whole (an aircraft, an engine and a propeller are defined as products that are subject to certification within the meaning of the EU regulations) but also a part of that whole (e.g. navigation systems). Evaluating 'dangerousness' of an appliance within this meaning that may substantiate its producer's liability, one should take into account the provisions regulating the process of designing and manufacturing aircraft and other aviation products.¹¹ Liability of a certified (authorised) manufacturer is on the foreground.¹² A question is also raised about the role of aviation authorities supervising the process of designing and manufacturing aviation equipment. These are the aviation authorities who grant every aircraft a certificate stating that it conforms to all the specifications laid down to ensure that aviation products meet fundamental requirements of aviation safety. In case of the EU, the aviation authority competence connected with certification of aviation products was given to the EU Aviation Safety Agency (EASA) pursuant to the provisions of Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency.¹³

It should be emphasised that the issue of aviation equipment manufacturers' liability has become especially important in recent years. Two accidents of Boeing 737 MAX aircraft first of all revealed the weakness of certification processes.¹⁴ From the perspective of civil liability, they resulted in the admission of liability by the manufacturer although, as the investigation indicated, one of the main causes of the two accidents was the defectiveness of one of the sensors of the MCAS system produced by a co-supplier.¹⁵ It was later found that the main problem consisted in the MCAS system alone, especially the manufacturer's activities connected with

¹⁰ Council Directive of 25 July 1985 on the approximation of the laws and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, as amended. For more, see Diederiks-Vershoor, I., *An Introduction to Air Law, 2006*, pp. 184–193.

¹¹ Commission Regulation (EU) No. 748/2012 of 3 August 2012 laying down implementing rules for airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations. OJ L 224, 21.8.2012, as amended.

¹² McClean, D. (ed.), *Shawcross and Beaumont AIR LAW*, LexisNexis, Edition 152 (2016), Vol. IV, p. 231.3 et seq.

¹³ OJ L 212, 22.8.2018, as amended.

¹⁴ See Correia, V., 'Certification Issues Revealed by the 737 Max Crisis: A Comparative Approach from a European Perspective', *Air and Space Law*, 2020, Vol. 45, No. 3.

¹⁵ For more, see Konert, A., 'Aviation Accidents Involving Boeing 737 MAX: Legal Consequences', *Ius Novum*, 2019, No. 3.

'hiding' the system in the new model of Boeing 737 from the operators and pilots, as well as aviation supervision authorities.¹⁶

Moreover, one of the most tragic aviation accidents in Europe that took place over Überlingen, a southern German town, in 2002, in which two planes collided, resulted in awarding damages not only from the institution providing navigation services but also the manufacturer of anti-collision system: TCAS (*Traffic Alert and Collision Avoidance System*).¹⁷ The direct cause of the crash was the fact that the air traffic controller realised that the planes were on a collision course too late and the two crews reacted to the situation differently. On the one hand, the controller instructed one of the planes to descend and the other to climb immediately. At the same time, the TCAS instructed the pilots to do the same but in a different sequence. The crew of one aeroplane followed the instruction of the TCAS while the other followed the instructions of the controller. This resulted in a mid-air collision. The lack of unambiguous instructions from the TCAS was the cause of the recognition of the system as a dangerous product.

A manufacturer's liability under the regulations concerning liability for a dangerous product is taken into consideration regardless of the type of aircraft or the systems installed on board.

The potential manufacturer's liability can be exemplified by an accident of a small training aircraft (LX-2), which took place at Warsaw Babice Airport on 1 May 2012.¹⁸ The circumstance conducive to the aviation accident that the airport indicated was "probably inappropriate work of the engine and/or the display of a warning and/or a caution of the FADEC system caused by fuel gasification resulting from high temperature in the surroundings and a 40-minute grounding at a sunny place before take-off". The final report suggests that the Flight Manual lacks detailed instructions concerning the use of the aircraft at high temperatures. However, such instructions can be found in the engine operation technical manual. According to the report, "the lack of relevant information in the Flight Manual might have lulled the pilot into a false sense of security as far as the use of an aircraft in high temperatures is concerned." That is why a safety recommendation was issued and addressed to the aeroplane manufacturer to introduce the procedure of the aircraft use in high temperatures into the Flight Manual. The lack of appropriate instructions in aircraft operation may result in its recognition as a dangerous product,¹⁹ and therefore also a manufacturer's liability.

A different situation is related to inappropriate **technical exploitation** of an aircraft, which includes continuing airworthiness management (including periodical technical inspection) and service activities (repairs) ordered within this

¹⁶ Bradley Wendel, W., 'Technological Solutions to Human Error and How They Can Kill You: Understanding the Boeing 737 Max Products Liability Litigation', *Journal of Ari Law and Commerce*, 2019, Vol. 84, issue 3, p. 379.

¹⁷ For more see Konert, A., 'Odpowiedzialność producenta systemów antykolizyjnych za szkody spowodowane przez wypadek lotniczy nad Überlingen', *Ius Novum*, 2015, No. 3.

¹⁸ Final Report of the State Commission on Aircraft Accidents Investigation No. 370/12.

¹⁹ McClean, D. (ed.), *Shawcross and Beaumont AIR LAW*, LexisNexis, Edition 152 (2016), Vol. IV, p. 247 and American courts' judgements referred to therein.

management. If aircraft exploitation technical malpractice is found to be the cause of an aviation accident, then its owner, actual operator or an organisation managing continuing airworthiness to which the owner or operator transferred their duties may be held liable. The liability of organisations providing services commissioned by the above-mentioned entities to perform certain service tasks (inspection, renovation, repairs) may be a special case of liability. In order to determine who is liable and explain whether relevant requirements have been neglected, it is necessary to refer to the detailed provisions regulating continuing airworthiness.²⁰

In case relevant requirements are not fulfilled, provided it results in an accident, as a rule Article 415 Civil Code (or Article 430 Civil Code) will constitute grounds for liability. If the tasks connected with continuing airworthiness management, including technical service of an aircraft, are transferred to an authorised organisation, an owner's or an operator's liability will be subject to evaluation in the light of Article 429 Civil Code.

2. LIABILITY FOR AIR NAVIGATION SERVICES

One of the state's roles in relation to air navigation is to establish and ensure the functioning of the system of air traffic management and to protect and handle this traffic.²¹ In order to fulfil those functions the state establishes and enforces detailed regulations on air traffic, organises and manages its airspace, as well as ensures the functioning of air navigation services in this space. These are services provided for air traffic understood as the traffic of all aircraft during their flight and on the manoeuvring area of an aerodrome.²² The air navigation services include aviation information services, the role of which is to provide all information and data necessary to plan and perform a flight in conformity with the binding air traffic regulations. A similar function is played by meteorological services, which provide meteorological information for the purpose of planning a flight and used during the flight. There are also communications, navigation and control services, which are assigned a task of maintaining the infrastructure and communications equipment, navigation information or one that allows localisation of an aircraft. Thirdly, there are air traffic services that are to directly support and control flights. These are services responsible for the provision of mid-air information, alarm services and air traffic control services. The latest service is particularly important because its role is to prevent mid-air collisions of aeroplanes, and aircraft collisions with barriers or other aircraft in the manoeuvring area, as well as to improve and maintain the organised flow of air traffic. This service is provided in particular sectors (parts) of airspace by air traffic control bodies. What is important, the regulations oblige an

²⁰ Commission Regulation (EU) No. 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, OJ L 362, 17.12.2014, as amended.

²¹ Żylicz, M., *Prawo lotnicze...*, op. cit., p. 231.

²² Definitions of particular services are based on those provided in *Wielka Encyklopedia Prawa. Tom 19. Prawo komunikacyjne*, ed. inter alia by Żylicz, M., Warszawa, 2021.

aircraft commander to follow the air traffic control permissions and requests, and the only departure from this rule is admissible in a situation involving a threat to an aircraft safety.

Legal regulations concerning the functioning of air navigation services are rather complicated, which results from both a high level of technical specialisation necessary in their operations and the necessity of ensuring relatively uniform international and European rules. The European legislator implemented the so-called Single European Fly programme, which is aimed at standardising the rules of using airspace.²³ The European Union regulations are substituting for the former national provisions regulating the functioning of air navigation services. It can be said that a far-reaching process of unification of the provisions regulating the operating and functioning of airspace and air navigation services at the European level is taking place. It is worth reminding that just due to the necessity of adjusting Polish law to the EU provisions in accordance with Act of 8 December 2006, the Polish Air Navigation Services Agency [PANSZA/PAŻP] was established²⁴ and given the status of a governmental legal person. PANSZA aims to ensure safe, continuing, fluent and efficient air navigation in the Polish airspace by means of performing the functions of institutions providing air navigation services, airspace management and air traffic management. It should be pointed out that although the tasks assigned to the Agency are public ones, the legislator clearly determined that the State Treasury does not take responsibility for the Agency's liabilities (Article 7 of the Act on PANSZA).

Looking for legal grounds for assuming that institutions providing air navigation services incur civil liability for an aviation accident, it is necessary to refer to the provisions of Civil Code because Act: Aviation Law does not regulate this issue. It seems that the liability of such entities should be excluded on the principle of risk, although, theoretically, it is possible to recognise them as "enterprises set in motion by natural powers" (Article 435 Civil Code) as the provision of air navigation services is not possible without the use of electricity and a series of technical appliances (radio stations, telecommunications links, radars, instrument display systems etc.). It should be taken into account, however, that the activity is a source of special hazard for third persons. Moreover, the functioning of institutions providing air traffic services is aimed at minimising risks occurring in the contemporary air traffic.²⁵ That is why liability of institutions providing air traffic services for potential damage should be based on the principle of fault (Article 415 or Article 430 Civil Code). As a result, an institution providing air traffic services is one of the entities that may be held jointly liable based on their fault, together with an entity exploiting an aircraft (Article 207 (7) AL). In order to hold an institution providing air traffic services liable together with an entity exploiting an aircraft for damage caused by

²³ For more see e.g. Markiewicz, M.T., 'Zarządzanie ruchem lotniczym i służby żeglugi powietrznej w prawie Unii Europejskiej – wybrane zagadnienia', internetowy *Kwartalnik Antymonopolowy i Regulacyjny*, 2017, No. 2(6).

²⁴ Act of 8.12.2006 on the Polish Air navigation Services Agency (consolidated text, Journal of Laws of 2021, item 260).

²⁵ Thus also Chatzipanagiotis, M., 'Liability Aspects of Air Traffic Services Provision', *Air and Space Law*, 2007, No. 4–5, p. 334.

an aircraft movement, the aggrieved should prove the occurrence of the following circumstances: firstly, the existence of an obligation to provide a given service in the circumstances of a given accident. For example, air traffic control service is provided only for flights in the controlled airspace after a flight plan has been submitted and a permission to fly into this airspace has been given. In addition, having taken into account the provisions regulating the functioning of a given service, it is necessary to prove a culpable act or omission, as well as a relation between this act or omission and the damage. That is why determination whether institutions providing air traffic services (especially air traffic control services) infringed the provisions regulating their functioning is of key importance for the recognition of their liability.²⁶ At the same time, what requires special attention is the issue of liability for air traffic control service's acts or omission due to the aim of the service (prevention of collisions). In general one can say that each time it is necessary to establish whether a controller provided data and instructions necessary for a safe flight diligently.²⁷ However, this evaluation is difficult because it also requires assessment of the conduct of the aircraft crew, which is first of all obliged to maintain safety during the flight.²⁸ Undoubtedly, however, air traffic control service's liability will be greater in case of flights performed based on instrument indications when the aircraft crew takes decisions based on the data provided by certain instruments, as well as permissions given by an air traffic controller. Joint and several liability of institutions providing air traffic control services is most often assumed in case of mid-air aircraft collisions and crashes against the ground resulting from the provision of erroneous instructions or insufficient attention of air traffic control services.²⁹ By the way, it is worth emphasising that, in the context of progressive automation of air traffic services' activities, considering liability based on the principle of fault is not the right response to the challenges of the 21st century.³⁰ That is why there are proposals to introduce a different solution concerning compensation for damage in case of automated systems of air traffic management. It concerns in particular highly automated systems of unmanned aerial vehicles traffic management that are being developed.³¹

²⁶ Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management / air traffic navigation services and other air traffic management network functions and their oversight, and repealing regulation (EC) No. 482/2008, Implementing Regulation (EU) No. 1034/2011, (EU) No. 1035/2011 and (EU) 2016/1377, and amending Regulation (EU) No. 677/2011, OJ L 62, 8.3.2017.

²⁷ In accordance with Article 122 AL, the user of the Polish airspace is obliged to immediately follow the instructions of an institution providing air traffic services and of air traffic bodies.

²⁸ For more see Chatzipanagiotis, M., 'Liability Aspects of Air Traffic...', op. cit.

²⁹ See in particular American courts' judgements referred to in McClean, D. (ed.), *Shawcross and Beaumont AIR LAW*, LexisNexis, Edition 152 (2016), Vol. VI, p. 164.3 et seq.

³⁰ See Contissa, G., Sartor, G., 'Liabilities and automation in aviation', *Proceedings of the SESAR Innovation Days*, 2012.

³¹ See Konert, A., Kotliński, M., 'U-Space – Civil Liability for damages caused by Unmanned Aircraft', *Transportation Research Procedia*, 2020, Vol. 51.

3. LIABILITY FOR AERODROME INFRASTRUCTURE AND OPERATIONS

Liability of an entity managing an aerodrome differs depending on the purpose for which the aggrieved uses the infrastructure of an airport. For the needs of the present article it is sufficient enough to limit the situation to one in which the damage caused by an aircraft movement is connected with the operations of the airport at the same time. Most often it will be an aviation accident that takes place in the course of an aircraft operation within the area of an aerodrome or in its nearest surroundings. In accordance with Article 80 AL, an aerodrome manager is responsible for safe exploitation of an aerodrome. That is why, in case of the infringement of the provisions concerning safe exploitation of an aerodrome, provided the infringement had impact on the occurrence of an aviation accident, an aerodrome manager's liability will be based on general rules, i.e. it will be treated as liability for causing culpable damage (Article 415 and Article 430 Civil Code). Obviously, detailed technical and exploitation-related requirements that an aerodrome manager must fulfil differ depending on the type of the aerodrome concerned. In a nutshell, public aerodromes involving passengers have to meet the strictest requirements.³²

One should approve of the opinion expressed earlier that there is a lack of grounds for the application of Article 435 Civil Code as grounds for holding an aerodrome manager liable.³³ It is so because the situation is analogous to the liability of an institution providing air navigation services. The whole aviation-related infrastructure of an aerodrome on its own, including runways and their lighting or navigation systems, does not pose increased danger. It serves the provision of safety for aircraft operations.

4. LIABILITY FOR AVIATION AUTHORITIES' ACTIVITIES

It is also possible that the activities of aviation supervision, i.e. the aviation authorities, will be found to have caused an accident.

In case of national authorities (the President of the Civil Aviation Authority), legal grounds for liability must be looked for in the provisions regulating the liability of the State Treasury for activities that infringe law (Article 417¹ et seq., Civil Code) and should take into account the national and European provisions regulating the rules of aviation supervision functioning. However, the application of the rules of public authorities liability for unlawful action or omission in aviation raises a series

³² See Articles 54 and 59a of the Aviation Law and Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 44, 14.2.2014, as amended.

³³ See Kaczyńska, S., 'Odpowiedzialność cywilna zarządzającego portem lotniczym z tytułu czynu niedozwolnego', in: Łuczak, K. (ed.), *Wybrane problemy prawne związane z funkcjonowaniem portu lotniczego*, Katowice, 2015, pp. 187–214.

of questions that require a deep analysis. Although the role of aviation authorities consists in the supervision over aircraft operators (and their entities), the obligation to comply with the provisions of the aviation law is the burden that first of all the operators must bear. That is why most activities of aviation authorities consist in “checking and confirming” whether a given operator meets the requirements of the aviation law (e.g. the issue of certificates and licences).

It should be taken into account that aviation authorities’ activities sometimes have the features similar to commercial activities as most of them are, at least partially, charged for (aviation fees). Therefore, foreign courts more and more often apply general rules of liability for damage in their judgements on aviation authorities’ liability.³⁴

Thus, it seems that it is possible to deal with aviation authorities’ liability in the following situations connected with aviation entities’ activities. Firstly, it concerns a situation when it is proved that a certificate was issued although not all the requirements had been fulfilled. Secondly, it is a situation when the authorities supervising a certificate holder recognise irregularities and then, despite the operator fails to amend them, do not take further steps that regulations stipulate (limitation, suspension or withdrawal of the certificate).

It should be also remembered that some competences of national aviation authorities are transferred to the European Union Aviation Safety Agency (EASA). In order to assess the liability of the Agency, which sometimes acts as an aviation authority (issues certificates for foreign air carriers), it is necessary to start with Article 97(3) of the Regulation (EU) 2018/1139. In accordance with the provision, in the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Regulation also stipulates that the Court of Justice shall have jurisdiction in disputes over compensation for damage caused by EASA (Article 97(4)).

5. COMMON ISSUES

In the situations when aviation entities are liable based on the principle of fault a question arises when we can decide that it is possible to impute fault to a given entity or a member of its staff (Articles 415 and 430 Civil Code). It does not concern a theoretical consideration of the issue of fault in civil law but the explanation of a few practical issues.

Fault in relation to liability in tort is considered when an entity can be accused of unlawful conduct within the meaning of the infringement of the legal order understood very broadly. Moreover, the assessment of conduct alone must be negative and lead to a conclusion that damage was done intentionally or because of the lack of due diligence (negligence or recklessness). In the area of liability for

³⁴ See Korzeniowski, J., ‘Case Law Digest – Liability of Aviation Regulators: Are the floodgates opening?’, *Air and Space Law*, 2000, No. 2, pp. 87–89.

aviation accidents, in relation to the first aspect of liability on the principle of fault (the objective one), the concept of unlawfulness should be treated rather broadly. Most of the provisions of aviation law are norms that are specialist, technical in nature and were developed for the purpose of ensuring safety in air traffic. The provisions are rather complicated as they take into account the level of technical development and, in addition, originate from various sources. They are contained in legal acts of different rank, although the most extensive requirements connected with air navigation are laid down in (national and EU) implementing regulations. Moreover, some of the technical rules connected with ensuring aviation safety are laid down in a given user's internal documents approved of by aviation supervision bodies.³⁵ As maintaining the procedures laid down in a given document directly results from the provisions of law, the infringement of the requirements established by those documents should be treated as an exhaustive premise of unlawfulness. In order to impute liability on the principle of fault, it is obviously necessary to prove that the conduct that was not in compliance with the aviation provisions or procedures was the reason for an accident and damage caused.

Discussing the second aspect of liability on the principle of fault (the subjective one), it should be stated that the assessment of the conduct of a person exploiting an aircraft (the crew) in a given situation should be based on an objective model of conduct taking into account due diligence required in aviation activities. That is why a court, taking into account the opinion of an expert witness, should first of all adopt a hypothetical model of conduct of a person exploiting an aircraft (the crew) and take into consideration the purpose of an operation performed, objective circumstances having influence of the occurrence of an accident (weather, traffic etc.) as well as the level of training and experience of the crew. Only then the circumstances of a given accident may be compared to the established model.

CONCLUSIONS

The above-presented analysis of possible grounds for liability of entities other than aircraft operators for aviation accidents leads to the following conclusions. In the vast majority of cases, this liability will supplement the liability of an aircraft operator or will be liability resulting from regressive claims. Liability of an operator (including a carrier) is subject to a special legal regime, which is advantageous for the aggrieved. However, one cannot exclude a situation in which other entities will be addressees of compensation claims from the very beginning. It concerns in particular cases in which aircraft operators believe they are the aggrieved as a result of other entities' activities.

At the same time, an aircraft (its elements) manufacturer becomes the first entity to be held liable within the regime of liability for a dangerous product. On the other hand, in case of entities liable on the principle of fault, liability of entities managing

³⁵ E.g. an operational manual for an aircraft operator, a flight manual for an operator, a technical service programme, an aerodrome operational manual.

continuing airworthiness, service organisations, entities managing aerodromes or institutions providing air navigation services will always be connected with the necessity of proving a culpable action or omission which is in relation with the cause of the aviation accident. And this will require specialist knowledge, at least in order to establish those actions or omissions in the light of technical provisions thoroughly regulating a given activity, including also internal norms (instructions) required by aviation law. The use of a final report on the investigation into an aviation accident for this purpose would be absolutely insufficient.³⁶

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CIVIL LIABILITY OF ENTITIES OTHER THAN AIRCRAFT USERS FOR AVIATION ACCIDENTS

Summary

Liability for damage caused as a result of an aviation accident means first of all liability of an air carrier for damage done to passengers and liability of an aircraft user for damage done to third persons. However, it is also possible to impute liability to other entities, such as an aircraft manufacturer, a service institution, an entity managing an aerodrome, an institution providing air traffic services, or even aviation supervision authorities. The article analyses potential grounds for those entities' liability. Liability of aviation personnel is not covered in the article.

Keywords: civil liability, aviation accidents

ODPOWIEDZIALNOŚĆ CYWILNA ZA WYPADKI LOTNICZE PODMIOTÓW INNYCH NIŻ UŻYTKOWNIK STATKU POWIETRZNEGO

Streszczenie

Odpowiedzialność za szkody wyrządzone wskutek wypadku lotniczego to przede wszystkim odpowiedzialność przewoźnika lotniczego za szkody wyrządzone pasażerom oraz odpowiedzialność użytkownika statku powietrznego za szkody wyrządzone osobom trzecim. Możliwe jest jednak również przypisanie odpowiedzialności innym podmiotom, takim jak producent statku powietrznego, organizacja obsługowa, zarządzający lotniskiem, instytucja zapewniająca służby ruchu lotniczego czy nawet nadzór lotniczy. Artykuł analizuje możliwe podstawy odpowiedzialności tych podmiotów. Poza jego zakresem pozostaje odpowiedzialność cywilna personelu lotniczego.

Słowa kluczowe: odpowiedzialność cywilna, wypadki lotnicze

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