AIR CARRIER’S LIABILITY FOR THE DELAY IN DELIVERY

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The increasing number of air transportations in the world transport system raises the issue of carrier's liability in case of delayed delivery of cargo within the stipulated time. It is also interesting that the legislation in the field of air transportation is invariable, however in practical court cases, lawyers are faced with the problems of determining jurisdiction and determining what rules are applicable: rules of international law or rules of national law.

The purpose of this study is to review the current state of legal regulation of the issue of carrier’s liability for the delayed delivery of cargo, as well as to refer to real court cases to understand the issues and aspects encountered by the practice.

Taking into account the goal of the study, the general scientific and special methods aimed at the research of legal phenomena were selected and used by the author. Thus, a formal-dogmatic method was used in the research. It provided an opportunity to identify the most important features of the legal regulation of the liability of the air carrier for delayed delivery of cargo. The use of the historical-legal method has allowed us to study the genesis of legal regulation under national and international legislation.

The conclusions were made on the basis of the analysis of scientific positions and views, as well as the approaches of domestic and foreign scientists using the comparative legal method. Case law review was carried out by applying the techniques of formal logic, with the help of synthesis, analysis, generalization, and analogy methods.

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An important result of the Second International Conference on private air law

in Warsaw was the adoption and signing of the Convention for the unification of certain rules of international air carriage (hereinafter referred to as the Warsaw convention).

However, different interpretations of the provisions of the Warsaw convention

have led to conflicting approaches to civil liability. Thus, some scholars argue that the liability of the carrier is contractual, while others, in turn, consider the liability to be non-contractual (tort). There are also opinions of scholars who define such liability as a special type of non-contractual liability, which results in non-performance of contractual obligations [3].

In addition, in 1999, the Montreal Convention was adopted by the international community. Thus, according to the provisions of this convention, it is considered to be the supreme legal force in comparison with the provisions and norms of the Warsaw system, if the country of the carrier and the recipient of services are participants and signatories of this Convention. Nowadays, more than 135 countries, including Ukraine, are participants of the Montreal Convention. Therefore, it can be argued that it is precisely the Montreal Convention that applies to the settlement of international air traffic disputes. The use of both conventions at the same time seems impossible [2, p. 24-26].

However, the Ukrainian courts do not consider the Warsaw or Montreal conventions as the basis for settling a dispute. On the contrary, as the analysis of the jurisprudence shows, the judges consider that the standards of national carriage rules prevail over any other legislation. Thus, in the text of court decisions there are provisions according to which the standards of the rules should be used to such controversial legal relations [1].

According to the information given above, we can see that judges in Ukraine still use the soviet approach, which is based on the fact that the standards of international law play an additional role, the application of the provisions of international law is possible only in the case when they do not contradict the domestic law. As a result such approach ruins the achievements of Ukraine's ratification of international agreements and the application of convention norms.

In our opinion, an international agreement, ratified by its members stipulates the obligation of each party to comply with its rules. Replacement of an international agreement by a national act, even if it establishes the same regulation as an international one, is considered inadmissible.

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