

Airport Operator Liability for Damages

Damage to cargo, Inadmissible passengers, Bird strikes

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Cargo – Limited or Unlimited Liability of Airport Operator



Applicable Instrument

- ▶ Cargo carriage is undirectional carriage
- ▶ In case of damage to cargo, first legal question what instrument is applicable – international air law or national law



Applicable instrument



Warsaw System



Montreal Convention 99

Damage to Cargo

- ▶ Carrier liability (Warsaw System or Montreal Convention 99)
- ▶ Agent liability – National law or private international law instruments?
- ▶ Period of Liability – Warsaw System airport to airport system, MC 99– encompass carriage outside an airport
- ▶ Claimants – consignor, consignee, owner of cargo?
- ▶ Defendants – Liable person (carrier or agent)



Subjective or Strict Liability

- ▶ Subjective or strict liability?
- ▶ Breakable or unbreakable liability limits?
- ▶ Warsaw as amended Hague Protocol 1955. subjective liability for damage to cargo in international air transport – Limited Liability, but breakable liability limits
- ▶ Montreal Protocol 4. unbreakable liability limits – Montreal Protocol 4 and MC 99 unbreakable liability for damage to cargo
- ▶ Are unbreakable liability of limits in line with national legal system?
- ▶ Special declaration of interest in delivery at destination is rarely used in practice



Period of liability

- ▶ Carriage by air, the period during which the cargo is in the charge of the carrier – article 18.3 MC 99
- ▶ What is airport – functional or technical definition?
- ▶ What if cargo premises are located outside airport fence?
- ▶ If carrier without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air. – art 18.4 MC 99
- ▶ MC 99 applicable in case of door to door transport – US court approach.



Servants and Agents of the Carrier

- ▶ The term servants and agents is not defined in Warsaw System and Montreal Convention
- ▶ Cumulative conditions (agent acted in the execution of a task assigned to them, execution of task serves the performance of the contract for carriage by air)
- ▶ Case Law – if Handling Company establish monopoly position, than there is no legal ground to subsume airport operator as agent in terms of Warsaw system
- ▶ Entrusting the goods to the handler create contract of deposit



Servants and Agents of the Carrier

- ▶ Liberalisation of ground handling market took place in 1997 – Directive on access to the groundhandling market at Community airports
- ▶ No monopoly position in the market for ground services (selfhandling and third party groundhandlers)
- ▶ Supreme Court of Italy – Handling Company is considered to be agent of the carrier
- ▶ Montreal Convention applies to the ground handling agent of the carrier



INADMISSIBLE PASSENGERS



INADMISSIBLE PASSENGERS

- Inadmissible person – A person who is or *will be* refused admission to a State by its authorities.
- a) *improperly documented persons*: e.g. persons who hold valid passports that have expired and/or persons without valid visas
- (b) *fraudulently documented persons*, i.e. persons who use illegal means to circumvent or otherwise avoid detection during migration controls, e.g. by arriving with fraudulent, falsified or counterfeit documents or by arriving with genuine documents that belong to someone else;
- c) *undocumented persons*, i.e. persons who arrive without documents. Such persons either embark with the relevant, valid documentation and then destroy their documents during the flight or lose their documents; or
- d) *other admission refusals*, i.e. persons holding genuine and valid documents of their own, and who appear to the operator to meet all conditions for entry, but are nevertheless denied entry by the public authorities for reasons beyond the operators control, e.g. lack of funds, information contained in the State's border control database or other reasons.

INADMISSIBLE PASSENGERS

- ▶ improperly documented persons – passenger liability (carrier general conditions of carriage), Handling Company – SGHA Annex A 2008, 2013, 2018 and Passenger Sales Agency for immigration fines,
- ▶ fraudulently documented persons, in general passenger liability – Handling Company in case of doubt of validity is obliged to inform police and carrier.
- ▶ undocumented persons exclusive passenger liability for immigration fines
- ▶ other admission refusals – From carrier perspective most problematic category of INAD passengers – there is no liability of handling company and passenger sales agency.

INADMISSIBLE PASSENGERS

- ▶ SGHA 1998, 2004 handling company is not liable to pay immigration fines – natural obligation
- ▶ In SGHA 2008 was introduced liability of Handling company (airport operator or third groundhandler) for immigration fines. Precondition is that Handling company have access to Timatic.
- ▶ Liability is excluded in the event of non bona fidae documents or another events outside control of their control (Timatic hasnt been updated)
- ▶ Service provider is obliged to update Timatic

INADMISSIBLE PASSENGERS

- ▶ Nothing was changed in terms of liability in SGHA 2013.
- ▶ In SGHA 2018 are prescribed more accurate condition in order to establish liability of Handling Company
- ▶ 1. Expired Passports or Passports visas without the minimum required validity at the day of entry
- ▶ 2. Non-Existence of Visa/Necessary Travel Document required by destination or transit station(s). (Excluding passports damaged or missing at point of transit or entry).
- ▶ Same conditions are prescribed in order to exclude liability - non bona fidae documents



INADMISSIBLE PASSENGERS

- ▶ Cumulative conditions has to be fulfilled:
- ▶ It is stipulated by the SGHA 2008/13/18 liability of Handling Company for imigration fines,
- ▶ Handling Company does have access to information that verifies visa validities (Timatic)
- ▶ It is not the event of non bona fide travel documents or event outside of their control



CASE LAW

- ▶ Mostly cases are related to the Airport Transit Visa – Schengen Zone for example
- ▶ Bahrein citizen on flight SJJ – LJU – BRU– NCL who posses UK visa, but passenger hasnt shengen transit visa is INAD passengers
- ▶ tunisian citizen who posses US visa, but no transit shengen visa on flight IAD –FRA – MUC – SJJ and return flight SJJ –MUC– FRA – IAD is INAD passenger
- ▶ No Legal Ground to seek reimbursement from the Handling Company, If passenger is detained at transit aiport by carrier staff due to lack of entry permit for final destination, but passenger possess valid documentation for the transfer destination and It is INAD passenger, but carrier has no right to claim damage
- ▶ Sabiha Gokcen airport problems there is no e visa kiosk to obtain e visa at the aiport



CARRIER LEGAL POSITION – INAD PASSENGER

- Carrier has alternative choice to seek reimbursement from the:
- **Passenger** (if passenger is denied entry into any country, he will be responsible for paying any resulting expenses, fines and charges levied against carrier, as well as the cost of transporting passenger from that country. In this case carrier will not refund the fare collected for carriage to the point of denied entry.
- **Handling Company** – 2.2.3 a) SGHA 2008/13/18 if it is stipulated liability for immigration fines
- **Passenger Sales Agency** – If a passenger concluded agreement through authorized agency



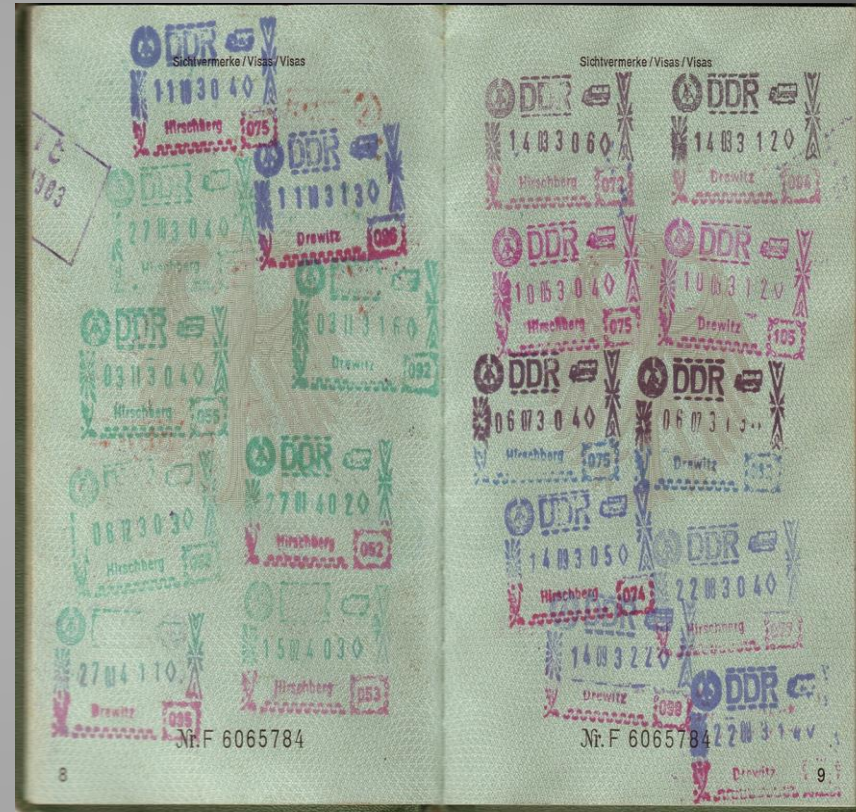
CARRIER LEGAL POSITION – INAD PASSENGERS

- Passive solidarity (Passenger, Handling Company, Sales Agency)
- Right to recourse againsts passenger and/or Sales Agency, if Handling Company admits its liability and pay imigration fine
- In practice Handling Company file insurance claim
- Admission Refusals – Passenger Liability for Penalties (problem in practice passenger insolvency)



Handling Company – Legal Position

- ▶ Inform carrier represent. in case of doubt that passenger doesn't have valid travel documents
- ▶ Exclude Liability in SGHA 2008/13/18
- ▶ SLA – operational performance related to the number of allowed mistakes (1 – 3 INAD passenger per year)
- ▶ Auto Timatic Check
- ▶ Internal and external training
- ▶ Liability insurance Policy
- ▶ SJJ has paid for immigration fines 40.000 euro in 2018



PASSENGER SALES AGENCY AGREEMENT

- ▶ Agreement for the provisions of BSP services to Airport Handling Agents and IATA
- ▶ IATA Passenger Agency Conference Resolutions internal part of BSP Agreement
- ▶ Subjective liability of Passenger Sales Agency
- ▶ Non IATA members conclude separate agreements



Airport Liability for Bird Strikes



Contractual/non contractual obligation

- It is airport operator contractual obligation to prevent bird strikes.
- Contractual obligation to prevent bird strikes can be found in Conditions of use airport infrastructure or SGHA – landing charges
- Airport operator – Conditions of use are best solution to exclude liability for negligence.
- No legal ground to exclude liability if damage is done with intent to cause damage or recklessly and with knowledge that damage would probably result.
- Carrier has to prove gross negligence or intention of airport operator for bird strike
- If conditions of use are silent about the degree of fault, than airport operator is liable for negligence, consequential loss, etc.

Airport Area of Responsibility

- In EU there is no regulation that stipulates airport area liability for damage caused by bird strike
- Active and passive measures airport operator can take only inside airport protective fence
- On Airport Bird strikes happened in airport area if they occurred during landing at the height of 200 feet, i.e. (61 metres) above the ground, or during take-off at the height of 500 feet, i.e. 153 metres above the ground, or they happened during take-off or landing, taxiing on the runway or parking of the aircraft –ICAO Doc 9332 Manual on the ICAO Bird Strike Information (IBIS)
- ICAO Doc 9932 is not binding document, it is scientific publication

Strict or subjective liability of airport for damage?

- EU Court of Justice C –315/15 261/2004 Regulation – reasonable measures must be taken by the carrier in order to reduce or even prevent risk collision with a bird – subjective liability
- Airport operator in order to be exempted from liability must prove that he is not guilty for the damage, i.e. that he took all available measures to prevent or reduce presence of birds in airport area – **Fully implementation of national positive legislation !!!!**
- Subjective liability has been found in France and Croatia for bird strikes
- What if airport operator is not in line with ICAO standards and recommendations?

Strict or subjective liability of airport for damage?

- ▶ In case of an strict liability of airport operator for damage caused by a bird strike, it is exclusively upon the Carrier to prove cause-and-effect connection between damage event and loss, amount of damage and height at which the collision occurred
- ▶ Legal Ground for strict liability – use of weapon



Questions!