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INTERNATIONAL ANTITERRORIST CONVENTIONS CONCERNING THE SAFETY OF AIR TRANSPORT

Summary. In this article the international law regulations are presented concerning the civilian safety of the air transport. The history concerning air terrorism and international antiterrorist conventions was described in detail, involving The Chicago Convention, The Tokyo Convention, The Hague Convention and Montreal Convention.

MIĘDZYNARODOWE KONWENCJE ANTYTERRORYSTYCZNE DOTYCZĄCE BEZPIECZEŃSTWA TRANSPORTU LOTNICZEGO

Streszczenie. W artykule przedstawiono międzynarodowe regulacje prawne związane z bezpieczeństwem cywilnym transportu lotniczego. Szczegółowo opisano historię dotyczącą terroryzmu lotniczego oraz międzynarodowych konwencji antyterrorystycznych, tj. Konwencja Chicagowska, Konwencja Tokijska, Konwencja Haska oraz Konwencja Montrealska.

1. THE SAFETY OF AIR TRANSPORT

Due to the events of the 11th September 2001 in the USA, the international community devotes a lot of attention, also in legal aspects, to the issue of air transport safety when facing the danger of terrorist attacks. Though it should be underlined that aircraft piracy and, of different quality, aircraft terrorism are not new phenomena, because the first case of hijacking a flying civilian aircraft was recorded in Peru in 1930. Since the 1950's a constant increase in the number of aircraft hijackings has been observed, but the real increase in the number of such cases was observed in the 60's. As A.E. Evans estimates, while between 1948 and 1967 there were 47 recorded aircraft hijackings in total, then in 1968 only the number of them was 30 [1]. This year was considered by some experts on terrorism (such as B. Hoffman) as a birth of modern international terrorism. The hijacking of the Israeli aircraft owned by El Al airlines committed by 3 Palestinian terrorists from Popular Front for the Liberation of Palestine (flight from Rome to Tel Aviv on the 22nd July 1968) is considered a distinctive point in history. It was considerably different from the previously known in world aircraft hijackings. The difference was marked by the fact that the terrorists intended to exchange the passengers they kidnapped for their colleagues imprisoned in Israel. The mentioned terrorist act constituted a certain political statement. The choice of the target was also significant (Israeli aircraft, implying the symbol

of the enemy Jewish country, in the opinion of the terrorists) and also the fact, that on the contrary to the previous plane hijackings, the terrorists were determined to kill the hostages in case their demands were ignored. That event showed the huge weakness of the aircraft transport industry, which is its vulnerability to terrorist attacks. It is caused by two factors: firstly, aircraft hijackings are enormously popular in the media, usually widely broadcasted and commented in the media and moving the hearts of wide public opinion. It perfectly corresponds with the aim of the terrorists, which is intimidating and forcing a certain group or community to meet their demands. The efficient effect of such intimidation can be achieved by media broadcast. The commercial side is provided by the aircraft hijackings, because seeing the hijacked plane together with possible suffering of the hostages is usually recorded in the psychic of an average observer. That is why hijackings are attractive to the terrorists, serving as a tool to promote them in media events. The attractiveness of them was noticed as early as in 1976 r. by an observer of UN Palestine Liberation Organisation, who said "the first several hijackings reached the awareness of the whole world, woke up the media and world public opinion a lot more successfully than 20 years of begging in the UN" [2]. The founder of the Popular Front for the Liberation of Palestine noticed that "plane hijacking is more successful than killing one hundred Israeli in a battle.(...) Through decades public opinion was neither for nor against the Palestinians. We were simply ignored. At least the world talks about us now" [2]. Secondly, the terrorist attacks on the World Trade Center and Pentagon from 11 September 2001 proved that an aircraft loaded with fuel in the hands of a terrorist - suicide pilot may also become very powerful demolition ammunitions. These events forced the international communities to work out proper law regulations. First resolutions concerning such issues were included in 1944, at the Convention on International Civil Aviation known as Chicago Convention (Journal of Laws of the Republic of Poland - Dz. U. 1959 No. 35, point 212). In article 12 the convention obliges the parties to hunt and punish those, who broke the law concerning the aviation and the safety of flying. Although this regulation was not directly aimed at terrorists, the scale of it included their actions. In the 60's the Chicago Convention occurred to be insufficient for successfully fighting with the aviation piracy and terrorism. As a result, due to the activity of International Civil Aviation Organization – ICAO, within 8 years 3 international agreements were passed, creating a so-called Tokyo-Hague-Montreal system constituting the international legal response to the development of crime aiming at civil aviation safety, and in particular aviation terrorism. The phenomenon is generally defined as "all international terrorist acts, aimed at and threatening the safety of international aviation" [3]. The mentioned system is built upon 3 following international agreements:

1) convention on offences and certain other acts committed on board an aircraft from 14 September 1973, known also as Tokyo convention (Dz. U, 1971, No.15, point 147)
2) convention for the suppression of unlawful seizure of aircraft from 16 December 1970, known as Hague Convention (Dz. U., 1972, No. 25, point 181 which later change.);
3) convention for the suppression of unlawful acts against the safety of civil aviation from 23 September 1971 known as Montreal Convention (Dz.U.,1976, No. 8, point 37).

Additionally on 24 December 1988, a protocol was passed on fighting against the unlawful acts of violence in airports serving international civilian purposes. Besides the above mentioned multilateral conventions, the described issues are also regulated by a series of bilateral international agreements (e.g. the treaty from 15th February 1973 concerning fighting against aviation terrorism between the USA and Cuba and obliging both parties to severe punishing of the perpetrators of hijackings or denouncing them to the country where the plane is registered).

2. THE TOKYO CONVENTION

Chronologically the first of the passed convention in the Tokyo-Hague-Montreal system was the Tokyo Convention. It may be applied, as it is stated in article 1 of the convention in case of: offences against penal law; acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.

The Tokyo Convention states in Article 11, defining the so-called unlawful takeover of an aircraft [3], that the parties signing the agreement are obliged, in case of hijacking or a threat of it, to take all the necessary measures in order to regain or keep control over an aircraft. The detailed analysis of the quoted article shows that in order of an unlawful takeover of an aircraft to take place, and at the same time to start the application of the convention, 3 conditions should be met [4]:

1) the hijacking or control takeover of an aircraft must be a result of unlawful use of violence or an attempt to use violence;
2) an aircraft should be "in flight" (that is, according to Article 1, paragraph 3 of the Tokyo Convention, from the moment when power is applied for the purpose of take-off until the moment when the landing run ends);
3) the unlawful act must be committed on board of an aircraft (that is, by a person being on board of an aircraft, e.g. a passenger or crew member. In case of an assault "from the outside", such an offence would be treated as an act of aviation piracy)

A general rule agreed upon the Tokyo Convention is that the general penalty jurisdiction towards the offenders committing the crimes included in this convention is performed by the country where the aircraft is registered. Special powers were also given to the captain of the plane. In a situation, when he has justification to assume, that a given person committed or is attempting to commit an act regulated by the convention, he can apply towards that person "reasonable measures" including restraint, under a condition that they do not break the rules enumerated in Article 6, paragraph 1 of the Tokyo Convention. In order to perform them the captain of an aircraft may turn to passengers for help. However, even without the order of the captain, any member of crew or passenger, can take reasonable measures, when he or she has reasonable grounds to believe that such action is necessary to protect the safety of the aircraft, or of people or property therein. The captain may decide to disembark a suspected person on the territory of any country, where the aircraft would land, and that country must agree to that. (Article 8 and 12 of the Convention).

The Tokyo Convention shows a lot of insufficiencies, such as:

1) a lack of obligation towards the countries – parties of the agreement – to severe punishment towards the offenders breaking the rules of the convention. This imperfection had a huge practical importance, especially for crews of the aircrafts. In March 1969, during a Congress of International Federation of Airline Pilots' Associations in Amsterdam with the presence of representatives of civil pilots from 41 countries, a resolution was unanimously passed, which guaranteed the pilots the right to 12 or 24-hours
2) international common strike in case of the impunity of the hijackers or in case of not letting the crew of the hijacked plane out within 48 hours [5];
3) lack of obligation towards the signing countries of extradition of the offender committing an act against convention to the country where the aircraft is registered in order to judge one. That imperfection significantly weakened the effectiveness of lawful pursuit after hijackers;
4) the limited range of subjects of use, because the regulations apply for civil aircrafts, and do not concern military, customs or police aircrafts.

3. THE HAGUE CONVENTION

The above mentioned imperfections of the Tokyo Convention and the increase in the number of hijackings in the 1960's and 70's led to passing on 16th December 1970 of the convention for the suppression of unlawful seizure of aircraft from 16 December 1970, known as Hague Convention. It insists on severe punishments for offenders breaking its rules and every country agreeing is obliged to apply them. An act considered as an offence is a behaviour of a person on board of an aircraft in flight who a) unlawfully, with restraint or its attempt or any other form of intimidation seizes or takes control over an aircraft or tries to do so, or b) is an accomplice of a person who performs or attempts to perform any such act. This detailed definition enables to state that an offence must be committed with the use of physical or psychological force or with the use of any other form of intimidation. It is

also necessary that an offence is committed on board of a plane in flight. Each member country – party in the convention- is obliged to adjust its jurisdiction in case of offences against the convention, in the following cases: 1) when the offence was committed on board of an aircraft registered in a given country; 2) when an aircraft, on board of which the offence was committed, lands on the territory of a given country with an offence suspect on board; 3) when the crime was committed on board of an aircraft leased without the crew of the leaseholder, which mainly works or mainly resides in a given country. The described methods of jurisdiction may sometimes lead to a concurrent jurisdiction, that is a situation when more than one country to claim a right to conduct a judicial procedure towards an offender.

If any such country denies legal proceedings towards the offender against the Hague Convention, such country must hand over the offender by means of extradition to other country, which also possesses the jurisdiction in a given case. The countries were given a choice: they should either punish a given offender or extradite him. Inadmissible is denial motivated by the fact, that the committed crime had a political character. The regulation of the extradition institution is an important achievement of the Hague Convention (this issue was omitted by Tokyo Convention) and it is justified by a statement, that this act remains, although years have passed, the basic instrument to fight with aviation terrorism [6,7,8].

4. THE MONTREAL CONVENTION

In 1971 (23 September) the third of the conventions in the Tokyo-Hague-Montreal was passed. Convention for the suppression of unlawful acts against the safety of civil aviation known as the Montreal Convention, states clearly the catalogue of the offences referring to it, stating in Article 1, that an offence is committed by each person who unlawfully and deliberately:

a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

An offence may be also committed by attempting or cooperating with a person who commit or tries to commit it [9]. Similarly to the Hague Convention, also the Montreal Convention obliges (Article 3) its parties to severe punishment of the crimes against its regulations. However, it was not decided upon the extent of punishment, leaving this issue to the discretionary decision of a country – party of convention. On the contrary to Tokyo and Hague Conventions the Montreal Convention does not imply, that a crime under its regulations should be committed on board of an aircraft. It introduces however an important novelty, which is an aircraft “in service”, differing from an aircraft “in flight”, which means from the beginning of the pre-flight preparation of the aircraft by ground personnel for a specific flight until twenty-four hours after any landing, but the period cannot be shorter than the period when the aircraft is considered to be “in flight” (Article 2 point a) and b) of the Montreal Convention).

Similarly to two previous conventions, the Montreal Convention does not include the offences committed against aircrafts used in military, customs or police. In case of other aircrafts for the application of the convention it is of no importance if an aircraft is performing a national or an international flight.

In 1988 the convention was supplemented with so-called Montreal Protocol (protocol for the suppression of unlawful acts of violence at airports serving international civil aviation). It expanded the catalogue of the offences included in Article 1 of Montreal Convention by offences with the unlawful and intentional use of a device, substance or weapon:

a) when an offender performs an act of violence against a person at an airport serving international civil aviation, which causes or is likely to cause serious injury or death;
b) when an offender destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft remaining there, or disrupts the service of an airport.

5. CONCLUSION

Although years have passed the three described conventions work perfectly as instruments to fight against aviation crime, including aviation terrorism. A change in the way of thinking about acts of terrorism appeared after 11 September 2001. The events showed that terrorists can, during the flight, perform acts of violence not only towards the passengers or the crew, but against an object or position remaining on the ground. In practice a huge problem of application of Article 3-bis of the Chicago Convention, stating a rule of utter refraining from using force against a civil aircraft in flight. It was necessary to revise the rule. The USA, as well as other countries later on, introduced in their national law some regulations enabling, after meeting certain conditions, the shooting-down of a civil aircraft. [10]. Poland did so by passing a bill from 2 July 2004 changing the bill concerning the protection of the national border and some other bills (Dz.U. No. 172, point 1805). The change referred to, among others adding to the bill - the Aviation Law from 3 July 2002 (Dz.U. No. 130, point 1112) a new Article 122a, according to which "If the safety regulations of the country require it and the leader of the aviation defence states that, the civil aircraft is used against the law, or particularly as a means to perform a terrorist attack, on the basis of information given by a national authority in the management of aviation traffic in particular, such an aircraft may be destroyed on the basis of the rules defined in the bill from 12 October 1990 concerning the defence of the national border". The discussed issue shows an exception of the rule to of the prohibition of the use of force towards a civil aircraft. It should be postulated for the detailed regulating of this matter in international law, including the precise definition of the conditions when a decision concerning shooting-down can be made.

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