

# THE AVIATION LAW REVIEW

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THE LAWREVIEWS

## Chapter 13

# CYPRUS

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## I INTRODUCTION

Air transport is the main mode of transport to and from Cyprus carrying almost the entire passenger traffic. Airport passenger numbers consistently grow, despite the adverse market conditions, while in 2019 a record number of 11 million passengers were handled by the island's two airports, Larnaca and Paphos.<sup>2</sup> The growth in the aviation sector is a global phenomenon and Cyprus is considered a viable alternative for the creation of ownership, leasing and finance structures.

Following Cyprus' accession to the European Union, the status of the operation of flights within the EU has been liberalised resulting in an increase in competition. The government has advanced the modernisation process of the two airports by selecting the private consortium Hermes Airports to undertake the construction and modernisation of new facilities.

To achieve an optimised use of airport capacity and to avoid congestion on the premises of the airports, slot allocation, as provided by EU Regulation No. 95/93,<sup>3</sup> is in force. Moreover, as regards allocation of scarce traffic rights, Ministerial Decree 208 was published, aiming to determine the procedure and criteria for granting access licences to Community carriers established in the Republic.

The legal framework for air transport in Cyprus is governed by EU legislation and international conventions and agreements on air transport and the Civil Aviation Law No. 213(I)/2002 (the Civil Aviation Law).

The competent authority on aviation matters is the Department of Civil Aviation (DCA), which is responsible, inter alia, for the supervision and operation of the country's airports, the development of air links between Cyprus and other countries, the provision and regulation of air traffic services, the development, design and supervision of the aviation security system, and the issuing and update of licences to Cypriot or foreign air carriers. Safety and security regulation and the implementation of Community legislation on air transport, including EU restrictive measures, are also among the DCA's main activities. The DCA also remains in continuous coordination with other governmental departments, bodies as well as international organisations of which Cyprus is a member.

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- 2 <https://www.financialmirror.com/2019/12/20/cyprus-airports-hit-record-high-of-11-million-passengers/>.
- 3 As amended. Also, the IATA Worldwide Slot Guidelines and the best practices of the European Airport Coordinators' Association (EUACA) are applied.

## II LEGAL FRAMEWORK FOR LIABILITY

The key legislation in Cyprus is the Civil Aviation Law, which is fully harmonised and aligned with the *acquis communautaire* on air transport. The implementation of the *acquis* is a dynamic process and the DCA is continuously monitoring and following the new developments.

In accordance with the established principle of the Supreme Court's case law,<sup>4</sup> Community law is superior to the national law. Furthermore, international treaties to which the Republic has acceded, have increased force over any other domestic law, but not over Community law.<sup>5</sup> Cyprus has implemented most international law instruments, which are applied as part of the Cypriot legal order.

### i International carriage

The key treaties on international air carriage that Cyprus has embodied are: set out below:

- a The Convention for the Unification of certain rules relating to international carriage by air, commonly known as the Warsaw Convention 1929, was ratified by the 1953 Decree on Air Carriage.
- b Law No. 66/1970 ratifies the Hague Protocol 1955 and the Guadalajara Convention 1961, which amend and supplement the Warsaw Convention.
- c Law No. 173/1988 implements the Protocol of Guatemala 1971 and Protocols of Montreal 1975, amending the Warsaw Convention.
- d Law No. 213/1988 applies the Convention on International Civil Aviation signed in Chicago in 1944 and its Thirteen Protocols of 1947–1984.
- e The Convention for the Unification of certain rules for international carriage by air, known as the Montreal Convention 1999 has become a part of the Cyprus legal order through Law No. 2(III)/2002.
- f Law No. 30/1972 implements the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention 1970).
- g Law No. 31/1972 embodies the Convention on Offences and Certain other acts committed on board aircraft (Tokyo Convention 1963).
- h The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention 1973) was ratified by Law No. 37/1973.
- i Law No. 15/1990 ratifies the EUROCONTROL Convention on Aviation Security 1960 and later, Law No. 22(III)/2000 adopts the Brussels Convention 1997 amending the EUROCONTROL Convention.
- j Law No. 33(III)/2001 adopts the 1988 Protocol relating to suppression of unlawful acts against the safety of civil aviation.
- k Law No. 10(III)/2018 ratifies the Convention on the suppression of unlawful acts relating to international civil aviation.

<sup>4</sup> As incorporated into Article 1A of the Cyprus Constitution.

<sup>5</sup> Article 169.3 of the Constitution.

### ii Internal and other non-convention carriage

Article 285 of the Civil Aviation Law stipulates that the scope of application in the Republic of the provisions of the Conventions of Chicago 1944, Tokyo 1963, Hague 1970 and Montreal 1973 are extended so that they apply not only to international flights but also to domestic flights. Further, Article 231(2) of the said Law underlines that the provisions of the Montreal Convention 1999 also cover the internal air carriage.

### iii General aviation regulation

The Civil Aviation Law regulates all relevant matters, including aircraft registration, airworthiness, maintenance and other safety rules, training of the aircraft crew, responsibilities and liability of the captain, airports' operation and fees, ground handling, landing and takeoff rules, air carriers, environmental protection, civil liability of air carriers and protection of the civil aviation. Each section is also governed and supplemented by the corresponding Regulatory Administrative Acts (RAA) as well as the relevant EU and international instruments.

The term 'aircraft' under the ambit of the Civil Aviation Law, implies any device capable of flying at least 30 metres above the ground and includes balloons, airships, gliders, kites, landplanes, seaplanes, amphibian aeroplanes, propeller driven aeroplanes, jet powered aeroplanes, helicopters and gyroplanes.<sup>6</sup> The provisions relating to liability apply to all aircraft under the Civil Aviation Law's meaning.

### iv Passenger rights

The Flight Compensation Regulation No. 261/2004 relating to denied boarding, flight cancellations, or long delays of flights is applied in Cyprus through RAA No. 283/2005. Moreover, Regulation No. 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier is embodied by RAA No. 541/2007. Regarding the rights of disabled persons and persons with reduced mobility when travelling by air, Regulation No. 1107/2006 is applied through RAA No. 287/2008.

The DPA is responsible for implementing the above Regulations in a case where the passenger departs from Larnaca or Paphos Airport or from a third-country airport to those airports and the air carrier is a Community carrier.

Passengers have the right to lodge a complaint to the DPA in the case of an alleged violation. If a violation is found, the passenger is entitled to the compensation provided. Also, the offender is subject to administrative sanctions.<sup>7</sup> Such a sanction may result in the imposition of a fine<sup>8</sup> or the suspension or revocation of a licence.<sup>9</sup>

Interestingly, in the course of Action No. 189/2016 between *DZ v. Blue Air Management Solutions SRL*, the District Court of Larnaca requested for a preliminary ruling under Article 267 TFEU on issues relating to denied boarding, passengers' rights and the responsibility of the air carrier that arose. The CJEU gave its ruling on 30 April 2020 in case C-584/18, holding that an air carrier's refusal of boarding based on the allegedly inadequate

<sup>6</sup> Article 2.

<sup>7</sup> Articles 243, 245 and 246 of the Civil Aviation Law.

<sup>8</sup> The fine shall not exceed the amount of €8,543 or 10 per cent of the annual turnover in the field of activity of the affected company – Article 246.

<sup>9</sup> Article 245 of the Civil Aviation Law.

nature of travel documentation does not deprive, per se, the passenger from protection under Regulation 261/2004. Accordingly, in the event of challenge, it is for the competent court to assess whether the denied boarding is reasonably justified or not. In this regard, Regulation 261/2004 precludes a provision, included in the air carrier's general terms, which limits or excludes its liability in the event of denied boarding for reasons relating to the allegedly inadequate nature of the passenger's travel documentation and thus deprives the passenger of any right to compensation he or she may have.

#### v Other legislation

Regarding employment law, the Organisation of Working Time of Flying Personnel of the Civil Aviation Law No. 12(I)/2004 is relevant. The said Law lays down the minimum health and safety requirements and covers issues such as annual leave, working rates, maximum working time, medical examinations, and the role and powers of inspectors.

Moreover, Chapter 24 of the Civil Aviation Law makes provision as to the protection of the environment. In particular, Article 190 confers an obligation upon airport operators, aircraft owners and captains to avoid and reduce environmental pollution caused by the emission of inevitable noises, vibrations or gases. In this area, the Evaluation and Management of Environmental Noise Law No. 224(I)/2004 requires, inter alia, the determination of exposure to noise emitted by means of air traffic through noise mapping.

Competition law issues are analysed in Section VI.

### III LICENSING OF OPERATIONS

#### i Licensed activities

According to Regulation (EC) No. 1008/2008, the air operator is required to obtain an operating licence and an air operator certificate (AOC). The licensing of air carriers falls under the responsibility of the Air Transport Licensing Authority (ATLA). An air carrier is licensed after securing an AOC from the DPA, which in fact certifies that the air carrier has the professional capacity and organisation to ensure the safe operation of aircraft for the aviation activities mentioned in it.<sup>10</sup> The conditions and procedure for issuing, suspending and withdrawing an AOC are defined in the JCAA Regulations, which are in force in the Republic.<sup>11</sup>

Once the AOC has been issued, the applicant must also acquire an operating licence, which allows the air carrier to provide air transport services as specified in it. Article 113 of the Civil Aviation Law provides that the operating licence is issued, suspended and revoked in accordance with the provisions of Regulation (EEC) No. 2407/92.

The air carrier's operating licence may be suspended or revoked if the operator is committing serious or repeated breaches of its obligations under the Civil Aviation Law or EU law.<sup>12</sup>

<sup>10</sup> *ibid.* Articles 2 and 123.

<sup>11</sup> *ibid.* Article 123(4). For the steps to be followed by applicants for an AOC see the DPA's website: [http://www.mcw.gov.cy/mcw/dca/dca.nsf/DMLSafety\\_en/DMLSafety\\_en?OpenDocument](http://www.mcw.gov.cy/mcw/dca/dca.nsf/DMLSafety_en/DMLSafety_en?OpenDocument). The relevant applicable fees are recorded under Civil Aviation Fees Regulations No. 458/2004.

<sup>12</sup> Article 247(4) of the Civil Aviation Law.

#### ii Ownership rules

Registration, transfer and deletion of the aircraft and of its rights, as well as every modification of the submitted data, are recorded in the Cyprus Aircraft Register, which is kept by the DCA.

The conditions under which an aircraft can be registered in the Cyprus Registry are specified under Section 11 of the 2002 Law, as follows:

- a the aircraft must not be registered in a foreign registry;
- b the aircraft has a valid certificate of airworthiness;
- c the aircraft's environmental compliance is attested by noise certification; and
- d the aircraft's owner with a stake greater than 50 per cent or holder of the rights to acquire them is a natural person of Cypriot nationality, or an EU national, even if not residing or staying in the Republic; or a body corporate that has been incorporated under Cyprus law or a Member State law; has its registered office and main place of business in Cyprus or Member State territory; and of which more than 50 per cent of the assets and capital are held by Cypriot or EU nationals.

The registration procedure is contained in Aeronautical Circular (AIC) No. C004/2010. Persons wishing to register an aircraft in Cyprus should submit an application at least three weeks in advance, accompanied by the documents listed in the Circular. Applicable registration and certification fees are specified in the Civil Aviation Fees Regulations No. 458/2004.

#### iii Foreign carriers

The Cypriot national procedure and criteria for the allocation of limited air traffic rights is included in Ministerial Decree No. 406/2008.<sup>13</sup> Any Community carrier with an AOC and a valid operating licence issued by a Member State under Regulation (EEC) No. 2407/92, which is established in Cyprus, may apply to the DCA for an access licence for available commercial rights and any new commercial rights granted under the relevant bilateral aviation safety agreements.<sup>14</sup>

The ATLA is responsible for granting commercial rights to foreign airlines to perform flights to and from Cyprus. In the case of third countries that have accepted the right of other Community air carriers to operate routes from Cyprus, a recommendation is made by an evaluation committee to the Minister of Communications and Works for granting permission to access such commercial rights.

### IV SAFETY

Under Articles 23 and 28 of the Civil Aviation Law, only persons who have successfully completed initial and periodic recurrent training may be employed as cabin crew members of an aircraft carrying passengers. Such training shall be provided by the aircraft operator after approval by the DCA and necessarily includes flight safety and first aid tasks. For flight crew and aircraft maintenance engineers licensing, the owner must contact the Licensing Section of the DCA's Safety Regulation Unit.<sup>15</sup> All procedures regarding pilots' licensing and approved training organisations' approval are in accordance with Regulation (EC)

<sup>13</sup> OJ EU 10 March 2009 C56/37.

<sup>14</sup> Article 5 of the 2008 Decree.

<sup>15</sup> [http://www.mcw.gov.cy/mcw/dca/dca.nsf/DMLairsafety4\\_en/DMLairsafety4\\_en?OpenDocument](http://www.mcw.gov.cy/mcw/dca/dca.nsf/DMLairsafety4_en/DMLairsafety4_en?OpenDocument).

No. 1178/2011. The applicable registration and certification fees are specified in Civil Aviation Fees Regulations No. 458/2004. Organisations involved in the training of such personnel (ATOs) shall be approved in accordance with the above Regulation. ATOs are issued with an approval certificate displayed at their offices, detailing the approved courses, which may include flight training for both the pilot and commercial pilot qualifications. Chapters 5 and 6 of the Civil Aviation Law include detailed provisions for the aircraft crew licences and training requirements.

As regards aircraft maintenance engineers' licensing, the applicable procedures and required qualifications are in accordance with Commission Regulation (EC) No. 1321/2014. AIC C009/15 contains the policy details followed by the DCA.

Furthermore, an aircraft may operate only if it is equipped with a valid certificate of airworthiness issued, extended, renewed, validated or recognised under the civil aviation law of the country in which that aircraft is registered and complies with the conditions under which the certificate of airworthiness was issued. The certificate of airworthiness is governed by Article 16 of the Civil Aviation Law and the EASA Regulations. The aircraft owner must contact the Airworthiness Section of the DCA. An airworthiness inspector will be assigned, who will be in charge of the certification process.<sup>16</sup>

Everyone involved with aviation in any capacity, including owners and operators, has a duty to report incidents and occurrences that could affect flight safety. The DCA operates a system for collecting occurrence reports in accordance with Civil Aviation (Incident Reporting) Regulations No. 334/2005. To that end, the Aircraft Accident and Incident Investigation Board (AAIIB) has been appointed as the appropriate official authority for the evaluation and analysis of the incidents that are mentioned in the Regulation and recommending the implementation of any preventive actions it considers necessary to be taken promptly to enhance aviation safety. It operates under Annex 13 to the Chicago Convention, EU Regulation No. 996/2010 and the Cyprus Aircraft Accident and Incident Investigation Law No. 73(I)/2015. The AAIIB, as the official investigation body, is obliged by the Regulation to publish a safety review annually in order to inform the public of the general aviation safety level at national level.

## V INSURANCE

Under Article 121 of the Civil Aviation Law, an air carrier shall be fully insured against risks for which it is liable in the event of accidents. This insurance obligation must be interpreted as meaning that every air carrier is required to be sufficiently insured so that all natural persons entitled to compensation receive the full amount they are entitled to.<sup>17</sup>

Each air carrier is required, upon request by the competent authority, to produce at any time an insurance document showing that the required insurance cover is complete and valid.<sup>18</sup> Those responsible for the construction, reconstruction or extension of airports, as well as the ground handling service provider, have an obligation to insure.<sup>19</sup>

Insurance requirements for air carriers and aircraft operations are contained in AIC No. 13/2005. In particular, Regulation (EC) No. 784/2004 applies, which defines the

<sup>16</sup> AIC 004/10, Section 2.

<sup>17</sup> Article 241(1) of the Civil Aviation Law.

<sup>18</sup> *ibid.* Article 241(2).

<sup>19</sup> *ibid.* Article 241.

minimum insurance requirements to cover passengers, baggage, cargo and third parties. For liability in respect of passengers, the minimum insurance cover shall be 250,000 special drawing rights (SDR)<sup>20</sup> per passenger. In respect of liability of third parties, the Circular also states the minimum insurance cover per accident for each aircraft.

## VI COMPETITION

As regards the application of competition law and state aid laws, the competent authority in Cyprus is the Commission for the Protection of Competition (CPC). The relevant provisions are included in the Protection of Competition Law No. 13(I)/2008. Articles 101, 102, 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) are also applicable.

Given the liberalisation of air transport, fresh opportunities continuously arise for air carriers to take a stand in the competitive Cypriot air transport market. Notably, the European Commission in its Decision 2015/1073 found that Cyprus illegally granted state aid to Cyprus Airways (€66,090,000 in total) in breach of Article 108(3) TFEU, distorting the free competition in the market of air transport in Cyprus and the EU. Given that Cyprus Airways was unable to return the illegal state aid, it eventually went bankrupt.

Moreover, the European Commission underlines that 'the availability of competitive airport services, including runways, passenger terminals and groundhandling, is critical for the continued success of EU aviation.'<sup>21</sup> Hermes Airports Ltd (Hermes) has the exclusive management rights of Larnaca and Pafos Airports, under a concession agreement with the Republic. Remarkably, following complaints by a private company against Hermes, the CPC decided<sup>22</sup> that Hermes breached Article 6(1)(a) of Law No. 13(I)/2008 due to abuse of its dominant position regarding parking facilities at Larnaca Airport. The Commission considered the nature and gravity of the infringement and decided to impose an administrative fine of €1,193,864.

## VII WRONGFUL DEATH

An air operator has the obligation to make, without delay, and in any event within 15 days of the identification of the person who is entitled to claim compensation, the necessary advance payment to meet the immediate economic needs, depending on the suffering of the injured person.<sup>23</sup> In the case of aircraft resulting in death of passengers, the deposit shall not be less than the equivalent amount of 15,000 SDR per passenger. Nevertheless, the advance payment does not necessarily constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier, who is subsequently found liable. The advance payment shall not be reimbursed except in circumstances where it is subsequently established that the person who received the payment caused or negligently contributed to the damage or was not entitled to compensation.

<sup>20</sup> The currency value of the SDR is determined by totalling the values in US dollars, based on market exchange rates, of a basket of major currencies. The SDR currency value is calculated daily and the valuation basket is reviewed and adjusted every five years ([https://www.imf.org/external/np/fin/data/rms\\_sdrv.aspx](https://www.imf.org/external/np/fin/data/rms_sdrv.aspx)).

<sup>21</sup> [https://ec.europa.eu/transport/modes/air/airports\\_en](https://ec.europa.eu/transport/modes/air/airports_en).

<sup>22</sup> The full judgment is available on the CPC's website in Greek (dated 16 May 2018).

<sup>23</sup> Article 240.

In August 2005, an aircraft operated by Helios Airways Ltd, which was scheduled to fly from Larnaca to Athens, crashed near Athens. In *Omiros Christodoulou a.o. v. A.G. of the Republic of Cyprus*,<sup>24</sup> the children of two of the passengers killed brought an action against the Republic claiming damages for bereavement.<sup>25</sup> In July 2007, the claimants received from the airline's insurance company a total amount of €1,778,585 due to their parents' death. Given that, the District Court preliminarily rejected their action, since it found that the claimants, by receiving the said amount as compensation in full and final settlement of all and any claims in respect of their parents' death, were estopped from claiming damages for the same rights for which they had already been compensated.

## VIII ESTABLISHING LIABILITY AND SETTLEMENT

### i Procedure

The passenger can bring an action before the competent Cyprus courts based on the breach of contractual obligations under Contract Law, Cap. 149 or for the breach of duty (torts) under Civil Wrongs Law, Cap. 148. A recent case is that of *Cyprus Airways Ltd v. Stelios Kourouklides*.<sup>26</sup> In this case, the Supreme Court of Cyprus concluded that Cyprus Airways had breached its contract with the claimant, regarding his return from London to Larnaca, since the captain of the aircraft unjustifiably and wrongfully denied them boarding on the aircraft. The Court awarded the amount of €350 as general damages, because of the inconvenience, discomfort, frustration and distress suffered as a result of the breach of contract. The Supreme Court also considered that Regulation No. 261/2004 was applicable and awarded the amount of €600 as compensation.

Another possible way to resolve disputes regarding air carrier liability is the procedure provided for under Regulation (EC) No. 861/2007 establishing a European Small Claims Procedure, provided that certain conditions are met. This procedure was applied in *Constantinos Papaleontiou v. LOT POLISH AIRLINES*<sup>27</sup> and was conducted based on both parties' written proposals and the Court's decision was handed down within 30 days. In this case, the claimant concluded a contract with the defendant for the transfer of his family and himself from Cyprus to France. When they arrived in France, it was found that their luggage had not arrived. The Court examined the provisions of the Montreal Convention, which affected the parties' contractual relationship, and found the air carrier liable for the damage occasioned by the delay in the carriage by air of the claimant's baggage under Article 19. The District Court awarded the amount of €924.74 as compensation for the costs incurred due to the delay in the baggage arrival, including the costs for buying a phone charger. However, the Court refused to award compensation regarding the costs of renting a navigational device because his own device was in the luggage, on the ground that the claimant had contractually assumed that such an electronic device would not be carried in his luggage, therefore not complying with that term of the contract contributed to his loss.<sup>28</sup>

In Cyprus, the limitation periods for actionable claims are regulated by the Limitation of Actionable Rights Law No. 66(I)/2012. For instance, the default limitation period for tort

<sup>24</sup> Action Nos. 8641-42/2007, dated 4 March 2016.

<sup>25</sup> Article 58, Cap. 148.

<sup>26</sup> Civil Appeal No. 336/2010, 25 October 2016.

<sup>27</sup> Action No. 1/2017, dated 26 April 2017.

<sup>28</sup> Article 20 of the Montreal Convention.

claims is six years from the completion of the cause of action, but exceptions do apply. If the claim is related to personal injury or death, the court has discretion to extend the relevant limitation period, under certain conditions.

Article 35 of the Montreal Convention provides that any court action to claim damages must be brought within two years of the date (or expected day) of arrival of the aircraft. As decided by the ECJ,<sup>29</sup> the national law of the Member States on the limitation of actionable rights applies, instead of Article 35 of the Montreal Convention, only when the nature of the claimant's claim for compensation does not fall within the scope of the Regulation (EC) No. 2027/97 and the Montreal Convention or when there is no provision on the limitation period. Hence, given the hierarchy of the rules of law in Cyprus, where the EU Regulation or the Montreal Convention, or both, do apply, the Article 35 provision on limitation of actions outweighs the relevant provisions under national legislation.

A relevant case on the matter is that of *Leontiou Papamina v. 1. Swissport Cyprus Ltd and 2. Cyprus Airways Public Co Ltd*.<sup>30</sup> In this case, the claimant asked for damages for personal injuries suffered due to the defendant's alleged negligence, while he was embarking on an aircraft owned by Cyprus Airways. Following an objection raised by the defendants, the Court considered that the claim falls within the scope of Regulation (EC) No. 2027/97 and the Montreal Convention and thus it should have been filed within the two-year limitation period set out in Article 35. The claimant failed to comply with the above provisions, and thus the proceedings in respect of Cyprus Airways were dismissed.

According to Article 239 of the Civil Aviation Law, it does not follow that the air carrier is the only one liable for compensation. Article 17 of the Montreal Convention also states that it is the carrier who has tortious liability for the damages sustained under the conditions specified in it. Nevertheless, as Article 30 of the Montreal Convention stipulates, if an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under the Convention. Although the provisions of the Montreal Convention may limit the nature of the claim that may be made against a servant or agent of the air carrier, the question of their liability is a matter decided under the provisions of national law and as reported by the UK Supreme Court in *Western Digital Corporation a.o. v. British Airways plc*,<sup>31</sup> such persons do not enjoy the protection of the provisions under the Montreal Convention beyond that under Article 30.

### ii Carriers' liability towards passengers and third parties

According to the general rule, as under Article 232(1) of the Civil Aviation Law, each air carrier shall be liable for compensation for a passenger's death or personal injury caused by an air accident, provided that the accident causing death or injury occurs onboard the aircraft or

<sup>29</sup> *Joan Cuadrench Moré v. Koninklijke Luchtvaart Maatschappij NV*, 22 November 2012.

<sup>30</sup> Action No. 424/2012, 23 June 2017.

<sup>31</sup> [2001] QB 733.

in the course of any of the operations of embarking or disembarking;<sup>32</sup> for damage sustained by delay;<sup>33</sup> and for destruction, loss of, damage to or delay caused during the carriage of checked baggage.<sup>34</sup>

It is further specified that in the event of damage sustained by delay as well as liability for baggage, the air carrier is required to notify the passenger as to the receipt and examination of the complaint within 14 days. Within a further 30 days, the air carrier shall notify the passenger of its final decision and, upon acceptance of liability, proceed to the corresponding payment.<sup>35</sup>

As stipulated by Article 233, the carriers' liability is strict, hence not based on fault. It is further mentioned<sup>36</sup> that the carriers shall be wholly or partly exonerated from their liability to the claimant, in the event it is proved that the damage was caused or contributed to by a wrongful or negligent act on behalf of the latter.<sup>37</sup>

Article 104 provides for the right to claim compensation when a person suffers loss or damage, caused by forced landing, re-takeoff or removal from an aircraft. The Act's provisions relation to aircraft liability are applied *mutatis mutandis*.

The 2002 Law states that the Criminal Code also applies in the field of civil aviation.<sup>38</sup> The relevant provision for criminal liability is Article 250, which states that the person who commits one of the offences listed within it shall be punished by imprisonment for a period not exceeding two years or a fine not exceeding €2,600, or both. When a pilot is punished for one of the offences stated, the owner and operator of the aircraft shall be punished with the same penalties, provided they tolerated the pilot's criminal conduct.

### iii Compensation

Under Article 21 of the Montreal Convention, the carrier is strictly liable without proof of fault for passenger injury or death up to provable damages of 100,000 SDR. If damages exceed 100,000 SDR, the carrier can excuse its liability by proving such damage was not due to the negligence of the carrier or its agents, or that it was due to a third party's negligence.

Importantly, a contractual clause that relieves the air carrier or its agents of liability or fixes a lower limit of compensation than that which is laid down in the Montreal Convention is null and void.<sup>39</sup>

The court will assess whether damages can be recovered for loss of earning capacity, pain and suffering, loss of expectation of happiness, etc. As regards the Cyprus courts' approach, the modern tendency is to increase the amount of compensation awarded, ensuring a fairer and more liberal assessment of human pain. The courts have the power to award general damages, whose purpose is to safeguard justice and compensate the inconvenience and discomfort experienced by the innocent party without, however, placing an excessive burden on the

32 Governed by the provisions of Articles 17,20 and 21 of the Montreal Convention (Article 236 of the Civil Aviation Law).

33 Articles 19, 20, 22(1), (5) and (6) and Article 31 of the Montreal Convention apply (Article 237 of the Civil Aviation Law).

34 Governed by the provisions of Articles 19, 20, 22(2), (5) and (6) and Article 31 of the Montreal Convention (Article 238 of the Civil Aviation Law).

35 Article 237(2) and 238(2) of the Civil Aviation Law.

36 Article 234 of the Civil Aviation Law.

37 Article 20 of the Montreal Convention.

38 Article 27(4).

39 Article 235.

wrongdoer.<sup>40</sup> The compensation should be fair, reasonable and socially acceptable. Based on the established case law, in the event of a breach of contract, the courts can award damages for mental distress due to discomfort, inconvenience or any other damage caused to the claimant. For instance, in *Marcos Pantelides a.o. v. Aerotrence Aviation & Tours Ltd a.o.*,<sup>41</sup> the District Court awarded the amount of €1,000 to each claimant for the psychological distress and physical inconvenience caused to them during a flight operated by the defendants. This kind of compensation should not be too remote a consequence of the defendant's breach and has been characterised by common law as 'modest compensation'.<sup>42</sup>

Moreover, punitive damages may also be claimed, but they can only be awarded where the defendant's conduct is so reprehensible that it is appropriate to be punished by a civil court. Such conduct is accompanied by strong elements of arrogance and tends to humiliate the victim.<sup>43</sup>

## IX DRONES

The use and operation of unmanned aircraft (drones) in the airspace of the Republic of Cyprus is governed by the Civil Aviation Law, Ministerial Decree No. 402/2015<sup>44</sup> and Civil Aviation Decision No. 403/2015,<sup>45</sup> which aims to ensure the safety of flights within Cypriot airspace. Drone owners are expected to register, with no charge, their aircraft with the DCA through the website [www.drones.gov.cy](http://www.drones.gov.cy).

The use of drones for recreational purposes is allowed without authorisation from the DCA, while the commercial use of drones requires, under certain circumstances, the securing of an operating licence and that the operator hold a pilot licence,<sup>46</sup> both issued by the DCA. For this purpose, the legislation distinguishes between open and special category drones.

For safety purposes, all flight operations of such aircraft shall be carried out in accordance with the conditions defined under Section 6(3)(i) to (xvi) of Decree No. 402/2015. Among others, a safety distance of at least eight 8 kilometres from an airport or landing strip shall be maintained, while flights above, within, or in proximity to military installations, public utility installations, archaeological sites and public or private facilities, are not permitted.

The pilot licence requires that the owner or operator provides for insurance cover against death, personal injury and damages, caused to third parties, for the minimum amount of €1 million.<sup>47</sup> Currently, the DCA does not recognise drone pilot licences of other countries and the process of issuing a commercial drone licence is currently taking up to one year.

Owners and operators of drones who fail to comply with the provisions of the applicable legislation are committing an administrative offence and will be subject to penalties in accordance with Articles 245 to 247 of the Civil Aviation Law.<sup>48</sup>

40 *Ioannou a.o. v. Kapsis Travel and Trade Ltd* (2003) 1 AAD 52.

41 Action No. 914/04.

42 *Jarvis v. Swans Tours Ltd* [1973] 1 All E.R. 71, *Watts v. Morrow* (1991) All ER 937 and *Vera Litvinyuk v. Hawaii Hotels Limited (Hawaii Grand Hotel Resort)*, Action No. 5382/07, 29 November 2013.

43 *Rookes v. Barnard* (1964) 1 All E.R. 367 and *Papakokkinou a.o. v. Municipality of Paphos* (1998) 1 (B) AAD 634.

44 Conditions for the Operation of Unmanned Aerial Vehicles in the Republic.

45 Exemption of Unmanned Aerial Vehicles from Obligatory Registration.

46 Section 7(2) and (4).

47 Section 9.

48 Section 8.

## X VOLUNTARY REPORTING

Besides the mandatory reporting system, Regulation No. 334/2005 sets up a voluntary reporting system for collecting and analysing information on observed deficiencies in air transport, for which reporting is not required on the basis of the mandatory reporting system, which, however, are considered to be dangerous or potentially dangerous.<sup>49</sup> The procedures governing the voluntary reporting system are the same as those governing the mandatory reporting system. As underlined in the AIC C03/2003, it is legitimate for an organisation or individual to report voluntarily any defects on equipment fitted to aircraft types not subject to mandatory reporting.

The Regulation also states that an employee who reports an incident should not suffer any harm or consequence from his or her employer regarding his or her employment status.<sup>50</sup> Moreover, under Article 22(1) of Law No. 73(I)/2015, any person involved in the investigation of accidents is obliged to treat any information as confidential, otherwise they will be guilty of an offence and punished with imprisonment of no more than two years, a financial penalty not exceeding €20,000, or both.

## XI THE YEAR IN REVIEW

In 2019, two airlines, Cobalt Air and Germania, which were bringing thousands of tourists to the island, ceased their operations in Cyprus. The closure of Cobalt Air, a Cypriot firm, has meant the end of direct flights to four countries and revived the debate of Cyprus' air connectivity with the rest of the world, in the wake of the demise of state-owned Cyprus Airways. In the meantime, an application to the DCA for the establishment of a new Cypriot airline company is pending, aiming to fill the 'travel gap' left by Cyprus Airways.

Importantly, by the end of July 2019, the Cyprus Parliament passed the new Law on the Provision of Aeronautical Services (Law No. 114(I)/2019), which provides that a state-owned company, instead of the DCA, is now in charge of air traffic management and the provision of aeronautical services. Such a company, which exists in most EU countries in collaboration with Eurocontrol, is expected to provide more flexibility in managing air traffic today, while increasing the state's revenues and reducing flight delays. The said state-owned air navigation company is expected to fully operate in 2021.

## XII OUTLOOK

Undoubtedly, Cyprus' aviation law reflects and incorporates entirely the EU and international civil aviation legal regime. Cyprus, through the DCA, closely follows new developments so as to comply with the new regulations and directions effectively and expediently.

Currently, 70 airlines fly from Cyprus to 40 countries and 120 destinations, and new routes are expected to be added. The liberalisation of air transport, in combination with the development of the new airports, is expected to create the potential for Cyprus to become a regional transit hub between Europe and the Middle East. Nevertheless, public concerns remain regarding high airfares, given that the latter negatively affect the island's connectivity.

<sup>49</sup> Article 9.

<sup>50</sup> Article 8(4).

In an intervention at the EU Transport and Telecoms Council that took place in Luxembourg in June 2019, the Cyprus Minister of Transport raised the issue of air pollution and warned her counterparts that efforts to reduce greenhouse gas emissions from the aviation industry should not make prices prohibitive, since air transport is indeed the only means for Cyprus residents to connect with Europe and the rest of the world. She also underlined that any effort to reduce emissions should be based on ensuring the international competitiveness of the EU aviation sector and considering the particularities of all Member States.<sup>51</sup>

Meanwhile, the Ministry of Transport, in cooperation with Hermes Airports, has already proceeded with the incentive programmes aimed at strengthening connectivity. In parallel, the regulatory framework applied in the EU as well as the 'open skies' policy, as implemented by the Cyprus government in its relations with third countries (for instance the bilateral agreements with Egypt, Lebanon, Australia, Kuwait and Saudi Arabia) have also contributed to the development of air transport.

<sup>51</sup> <https://cyprus-mail.com/2019/06/07/reducing-aviation-emissions-mustnt-undermine-cyprus-connectivity-minister-warns/>.