

Author: Łukasz Dyrda

Title: Kolidyjna problematyka odpowiedzialności przewoźnika lotniczego za przewóz pasażerów i ich bagażu/ Air carrier's liability in respect of the carriage of passengers and their baggage by air in the conflict of laws

Source: „Kwartalnik Prawa Prywatnego” („Quarterly of Private Law”)

Year: 2014, **vol:** XXIII, number: 2, pages: 337-392

Keywords: air carrier's liability, air carrier liability, carriage of passengers by air, 1999 Montreal Convention, Montreal Convention of 1999, 1929 Warsaw Convention, Warsaw Convention of 1929, Regulation (EC) No 2027/97, unification of the substantive law, conflict of laws, conflict of rules, conflict-of-law rule, unilateral conflict-of-law rule, application of the uniform law,

Discipline: private international law

Language: Polish

Document type: article

Publication order reference: PhD candidate, Jagiellonian University, Faculty of Law and Administration, Chair of Private International Law, Kraków (Poland)

Abstract:

The legal framework of the international carriage of passengers and their baggage by air consists of international conventions providing uniform laws, the law of the European Union and the national legislations of the member states of the European Union. The European Union is a party to the Montreal Convention of 1999, while its member states are bound by both the Montreal Convention and Warsaw Convention of 1929. They are intended for the unification of certain rules for international carriage by air. The member states of the European Union also apply Regulation (EC) No 2027/97 as amended by Regulation No 889/2002. The multiplicity of the sources of law has a significant impact on the designation of the law applicable to the liability of air carriers for passengers and their baggage.

The conflict of laws is based on the assumption that a particular dispute may be settled according to the *lex fori* or foreign law. In each legal system there are conflict-of-law rules, which through connecting factors designate the law applicable to cases falling within their scope of application. National legislatures enjoy a wide margin of discretion to choose a relevant connecting factor for each conflict-of-law rule.

As regards the international carriage of passengers and goods by land (road and rail), sea or air, states have a great interest in settling disputes between passengers and carriers. Several connecting factors may be used to determine the law applicable to the liability of air carriers and there are strong reasons for each of them. Moreover, the effective enforcement of judgments rendered against air carriers often requires the involvement of several jurisdictions. It is thus clear that the classic tools of private international law do not produce satisfactory results. The uniform law appears to be a solution for the problems relating to the international carriage of passengers and their baggage. However, at the same time, it raises serious questions that should be discussed.

In respect of international carriage by air a crucial role has been played by the Warsaw Convention, laying down a uniform regime implemented by the vast majority of states. It has subsequently been amended by the Hague protocol of 1955, the Guadalajara Convention of 1961, the Guatemala Protocol of 1971 (not in force) and the Montreal Protocols of 1975 (the third of them is not in force). The Warsaw Convention has been replaced by the Montreal Convention, ratified by more than 100 states.

The article discusses the issue of the air carrier's liability in respect of the carriage of passengers and their baggage by air in the Polish legal system (and the legal systems of the member states of the European Union) from the perspective of the conflict of laws. The

analysis focuses on the relationship between the conflict-of-law rules of the Rome I and Rome II Regulations, Regulation No 2027/97, and the Montreal and Warsaw Conventions. It is argued that the uniform laws established by the Montreal Convention (including the reference made in Regulation No 2027/97) and the Warsaw Convention are applied by the member states of the European Union (and other contracting parties) as part of their legal systems by means of unilateral conflict-of-laws rules based on and interpreted from the rules on the scope of application of these uniform laws. The uniform law can also be applied as foreign law, when the conflict-of-laws rules of the forum (a non-member state of the European Union or not a contracting party) designate the law of the member state of the European Union (or a contracting party) as applicable and provided that the dispute falls within the scope of the uniform law in force in that state. Due to the multiplicity of the sources of law relating to the liability of air carriers, it is necessary to discuss the conflict of laws, the conflict of rules (both substantive and conflict-of-law) within an individual legal system and the conflict of the obligations of states.