
THE AVIATION LAW REVIEW

THIRD EDITION

EDITOR
SEAN GATES

LAW BUSINESS RESEARCH

THE AVIATION LAW REVIEW

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THE AVIATION LAW REVIEW

Third Edition

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EDITOR'S PREFACE

The Aviation Law Review has become a compulsory purchase for the libraries of those with commercial, legal or academic interest in international aviation law, contributing a unique perspective on these subjects from experts in many countries around the world. In this edition there are several helpful contributions on the approach of different jurisdictions to aircraft registration, made easier now in the United Kingdom following its recent accession to the Cape Town Convention. There are also highly insightful contributions from a number of new jurisdictions, including Colombia, the Isle of Man, the Cayman Islands and Singapore, further extending the reach of the *Review*.

This might be regarded as the year of the drone! With a number of alternative acronyms proposed by a variety of organisations, the remotely piloted unmanned aerial vehicle (UAV) is clearly on its way to becoming ubiquitous. Having been developed primarily for military purposes, it seems likely that its commercial uses will expand from aerial photography to aerial delivery courtesy of Amazon and beyond. While regulatory developments are continuing apace with these vehicles, not all of these are aligned. It is to be hoped that an international body representing the needs of operators will be formed so as to avoid a patchwork of conflict in the regulatory arena. No adequate resolution has yet been found to the vexed issue of the appropriate minimum insurance requirement for UAVs; progress in this matter will be an essential requirement given their potential for damage. The difficulties here include establishing ownership and the viability of small businesses faced with substantial, though arguably realistic, insurance premium demands.

There have been a number of significant decisions in different courts around the world in the preceding year and there are two startling examples of this in relation to airlines' liability to passengers. In the case of *Casey v. Pel Air* in the Supreme Court of New South Wales, the Court held that post-traumatic stress disorder (PTSD) is compensable under the Montreal Convention as bodily injury. The facts of the case are truly appalling and underline the truism that bad facts will never make good law. One has to wonder why, given that all other claims by the passenger were agreed, it was decided that this element of the claim should be resisted. This is an alarming development for carriers and

their insurers, who can expect to receive claims of this sort in Australia every time there is a hard landing or mid-air turbulence. Other jurisdictions will take note of the judicial view that PTSD is evidenced by physiological changes in the brain, opening the issue up for argument in every country where courts have hitherto found in favour of carriers. This was a hard-fought issue at the drafting stages of the Montreal Convention 1999 and the victories won there would seem to have been lost in this decision.

There seems little doubt there is a tide in the affairs of toxic cabin claims that is rising so far as employees are concerned, as represented in litigation in various jurisdictions around the world. The few attempts by passengers to launch such claims have foundered on the difficulty of establishing a probable link between the event and the illness. The current litigation can be expected to fortify passengers with illnesses that might be said to flow from exposure to the elements of 'toxic air', and will encourage plaintiff lawyers to redouble their efforts in pursuit of claims.

The Germanwings accident has electrified debate in a number of areas concerning the legal regulation of aviation. In a recent briefing by the French prosecutor, consideration is clearly being given to the possibility of criminal prosecutions arising out of the accident and the circumstances in which the co-pilot was allowed to continue to fly notwithstanding his serious and worsening psychological condition. Latest reports indicate numerous doctors had seen him and recommended that he stop flying but were constrained from advising his employer by privacy laws in Germany and Europe. Criminal prosecutions in France following aircraft accidents are unremarkable and it seems likely that this investigation will continue with serious consideration being given to criminal redress. The accident itself has again triggered the debate concerning whether cockpit doors should be locked during flight. The events of 9/11 were the trigger for the decision to lock cockpit doors. Both before and after that event, however, there have been numerous events of pilot incapacity and suicide. Different airlines have taken steps to ensure that when one of two pilots must leave the cockpit the other should not be left alone, but whether a determined pilot would be inhibited practically by a second person in the cockpit will be the subject of further debate and probably further rule-making.

Once again I would like to extend my thanks to the many contributors to this volume and welcome those who have joined the group. Their studied, careful and insightful contributions are much appreciated.

Sean Gates

Gates Aviation Limited

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Chapter 14

GREECE

*Christos Chrissanthis, Xenia Chardalia and Antonia Vasilogamvrou*¹

I INTRODUCTION

i The market

In Greece there are 39 airports, but only one of them, the Athens airport, is a large international one that can accommodate a significant volume of traffic. There are, however, about 15 other airports officially characterised as international airports and about seven of them do serve a considerable amount of international flights, particularly during the summer. In 2013 the total number of national flights (within the country) was 153,200; the total number of international flights served through Greek airports was 205,422. In 2014 the number of national flights was 171,157 and the number of international flights was 244,093. In 2013 the number of passengers in local flights was about 4.7 million and the number of passengers in international flights was about 13.9 million. In 2014 the respective figures were 5.9 million for local flights and about 16.2 million for international flights. If we concentrate on the Athens international airport, the number of local flights in 2014 was 64,167 and the number of international flights was 82,383. This amounts to total traffic of about 2.5 million passengers for local flights and about 5 million passengers for international flights for 2014. With respect to cargo, in 2014 there were 31,104 tons of cargo that arrived at the Athens airport from abroad and 29,918 tons of cargo that left Athens for other international destinations.

There is only one large air carrier in Greece, namely Aegean, which is a member of the Star Alliance and serves approximately 50 international and domestic short-haul destinations. In October 2013 the European Commission, after a long process, approved the merger of Aegean with Olympic, the other traditional, large Greek air carrier, which has encountered great financial difficulties during the past decades. In addition to

¹ Christos Chrissanthis and Xenia Chardalia are partners and Antonia Vasilogamvrou is an associate at Chrissanthis & Partners Law Firm.

Aegean, there 18 more licensed air carriers, but all of them are of very small size and carry on local operations only. Some operate helicopters or small planes only. Only nine air carriers have a staff exceeding 20 persons. In the past the Greek Civil Aviation Authority (CAA) has suspended the licences of two air carriers.

ii Air slots

With respect to air slots, Greece applies Council Regulation (EEC) No. 95/93, as amended. Greek Law No. 4233/2014 has established an independent national authority to act as a national coordinator of air flights and to provide national cooperation as required under the Regulation. This national authority consists of five members appointed by the Ministry of Transport, assisted by a staff of 15 employees. Although it is supervised by the Ministry of Transport with respect to compliance with national and EU legislation, it is considered to be an independent administrative body entrusted with its own budget. The Regulation raises a distinction between ‘coordinated airports’ and ‘schedules facilitated airport’. A coordinated airport is one where landing and take-off requires allocation of a slot by a coordinator. A schedules facilitated airport is one where there is potential for congestion at some periods of the day, week, or year that is amenable to resolution by voluntary cooperation between air carriers and where a schedules facilitator has been appointed to facilitate the operations of air carriers operating services or intending to operate services. The basic rule on allocation of slots is set by Article 10(2) of the Regulation: An air carrier is entitled to the same series of slots that it has been allocated in the previous scheduling period, if it can prove that it has actually used such slots at a rate of at least 80 per cent. According to Article 8(3) of the Regulation, if all slot requests cannot be accommodated, preference shall be given to commercial air services and in particular to scheduled services and programmed non-scheduled air services. In the case of competing requests within the same category of services, priority shall be given for year-round operations. Additional rules and guidelines established by the air transport industry worldwide, or Community-wide, are also taken into account. Slots may be transferred by an air carrier from one route or type of service to another, transferred between air carrier companies in the same group or exchanged between air carriers. However, any such transfer or exchange must be notified to and approved by the coordinator.

iii International conventions

Greece is party to several aviation international conventions. The most notable are the following:

- a* Chicago Convention (1944) on International Civil Aviation, effective since 1947;
- b* Chicago Air Services Transit Agreement (1944), effective since 1945;
- c* Chicago Air Transport Agreement (1944), effective since 1946;
- d* Geneva Convention (1948) on International Recognition of Rights in Aircraft, effective since 1971;
- e* Warsaw Convention (1929), effective since 1938;

- f Montreal Convention (1999) on the Unification of Certain Rules for International Carriage by Air, effective since 4 November 2003. The EU (of which Greece is a Member State) has also implemented the Convention by way of Council Decision 2001/539/EC; and
- g Hague Convention (1970) for the Suppression of Unlawful Seizure of Aircraft, effective since 1973.

Greece is also party to the European Union; hence, EU Regulations are directly applicable and enforceable in Greek law, while EU Directives are implemented into local law by way of national legislative instruments.

Unfortunately, however, Greek courts do not always follow court precedents set by the European Court of Justice (ECJ) or the Council of the EU (CEU).²

II LEGAL FRAMEWORK FOR LIABILITY

i International carriage

Greece is party to the Montreal Convention on the Unification of Certain Rules for International Carriage by Air (the Convention), which was adopted among International Civil Aviation Organization (ICAO) members in 1999. The Montreal Convention has been implemented into national law by way of Greek Law No. 3006/2002, which came into force on 4 November 2003. Greece has made no reservations under Article 57 of the Convention; as a result the Convention applies to (1) international carriage by air performed and operated directly by the state for non-commercial purposes in respect of its functions and duties as a sovereign state, and (2) to carriage of persons, cargo and baggage for the state's military authorities on aircraft registered in or leased by the state, the whole capacity of which has been reserved by or on behalf of such authorities.

There are some peculiarities in the way Greek courts apply the Convention, and these are discussed below.

As with any other international convention, uniformity should be desired and sought in its interpretation by local courts. To achieve uniformity the Convention should be interpreted exclusively on its own, without reference to local laws. Nonetheless, the Convention does leave gaps that require interpretation. Some gaps are to be filled by reference to domestic laws, but others can be accommodated by an 'internal' and 'exclusive'

2 For example the ECJ judgment in the case of *Walz v. Clickair*, C-63/09, 6 May 2010 that the limits in the quantum of liability established by the Montreal Convention apply to both damages for loss of property and psychological damages, is not always followed by Greek courts, which usually grant awards for psychological damages in excess of the limits of the Montreal Convention. Similarly, the judgment in Case C-549/2007 (decision dated 22 December 2008) in which the ECJ reasoned that lack of spare parts does not constitute *force majeure*, relieving the air carrier from liability in cases of cancellation of flight, is again not followed by local courts (i.e., the Greek Cassation (Supreme) Court has ruled the opposite in its judgment 1369/2007, published in *Business & Company Law Review* [a Greek law journal] 2008, 223.

interpretation. So, national law has a role to play with regards to the interpretation of the Convention. However, in practice Greek courts have not paid particular attention to the need to preserve uniformity and seem unconstrained in applying local law to fill gaps in the Convention. This applies particularly with respect to psychological (moral) damages for psychological distress, which according to the prevailing interpretation of Greek courts is not regulated by the Convention and is to be decided and determined on the basis of local laws;³ hence, although the ECJ has reasoned otherwise,⁴ the prevailing opinion in court judgments is that awards for psychological damages escape the limits of compensation established by the Convention and are supplementary to any other compensation under the Convention.⁵ In awarding psychological damages Greek courts apply national law, in particular Articles 914 and 932 of the Greek Civil Code, which are the basic provisions on torts and psychological damages respectively.⁶

Indeed, whether the Convention allows indemnification in respect of psychological (moral) damages is a controversial and much-disputed issue in international legal literature. It is suggested that a pure mental injury is not recoverable. A mental injury that causes bodily injury is not recoverable in most jurisdictions. However, a mental injury that is caused by a bodily injury is recoverable, according to what seems to be the prevailing opinion. One of the most controversial issues, though, is the recovery of post-traumatic stress disorder symptom; a matter that greatly depends on the question of whether this symptom is caused by changes in the brain cells. If this is actually so, there is a good chance, at least in some jurisdictions, of arguing that it is a mental injury caused by a bodily injury and that it is recoverable under the Convention. In Greece, it seems to be standard practice for courts to award psychological damages, although they have not really dealt with any of the above issues in an express and specific manner, and these issues have not really been raised before the courts by attorneys.

Another much-disputed issue in international legal literature is whether it is the Convention or national law on labour accidents that should apply in cases of death or injury of crew members. Again, Greek courts have applied the Convention in such cases, but without having expressly and specifically dealt with the issue, which has not even been raised by attorneys. It has been suggested that the correct approach would be to apply the law that is more favourable to the claimant in view of all surrounding circumstances.

Traditional case law considered lack of local availability of spare parts as an incident of *force majeure*, relieving an air carrier from liability for a long delay or a cancellation of a flight, in cases where an aircraft needed repairs and spare parts were not available

3 Thus held in cases such as: Greek Cassation (Supreme) Court, Areios Pagos, 1369/2007, 39/2006 and Appeal Court of Athens, 1531/2006, *Business & Company Law Review* [a Greek law journal] 2011, 936.

4 Case of *Walz v. Clickair*, C-63/09, 6 May 2010.

5 Note, however, that one case held otherwise: Appeal Court of Athens 1531/2011, *Business & Company Law Review* [a Greek law journal] 2011, 936.

6 Judgments include: Multimember First Instance Court of Athens 7658/2009, 2229/2010; and County Court of Thessalia 7757/2001.

locally.⁷ However, in case C-549/2007 the ECJ (decision dated 22 December 2008) reasoned that such an incident should not be considered as *force majeure* and this legal precedent should have a great impact on local court jurisprudence as well.

In cases of passenger death or injury, Greek courts usually find concurrent liability in both contract and tort and usually award psychological damages as well. However, in cases of long flight delays, or delays in delivery of baggage, courts are usually reluctant to grant awards for psychological damages, as they consider this to be only a breach of contract. In such cases courts award psychological damages only if there are facts additional to mere breach of contract; that is, facts that can establish some contravention of legislation or some infringement of the right of passenger to personality.⁸

Greece is a Member State of the European Union, which is itself also party to the Convention. So, upon signature of the Convention, Greece declared that ‘in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention’. It is to be noted that all Member States of the EU have transferred to it international competence with respect to matters such as liability for damages due to death or injury of passengers, or due to delay, or due to destruction, loss, damage or delay in the carriage of baggage, as well as with respect to passenger information rights and minimum insurance requirements. So, in these fields, it is the EU that has competence to adopt the relevant rules that Member States enforce and to enter into external undertakings with third countries and international organisations.

Greece also applies all EU legislation on air carriage liability such as: (1) Regulation (EC) No. 2027/97 as amended by Regulation (EC) No. 889/2002, on air carrier liability in respect of carriage of passengers and baggage; (2) Regulation (EC) No. 261/2004 on compensation and assistance to passengers in case of denied boarding and cancellation, or long delay of flight; and (3) Regulation (EC) No. 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air. Directive 90/314/EEC on package travel, package holidays and package tours has also been implemented into Greek law by way of Presidential Decree No. 339/1996.

7 Greek Cassation (Supreme Court), Areios Pagos, judgment No. 1369/2007, *Business & Company Law Review* [a Greek law journal] 2008, 223.

8 Cases where courts did not award psychological damages: Appeal Court of Athens 1531/2011; *Business & Company Law Review* [a Greek law journal] 2011, 936 and Greek Cassation (Supreme) Court, Areios Pagos, 39/2006; *Chronicles of Private Law* [a Greek law journal] 2006, 451; Appeal Court of Thessaloniki 1199/2009; *Review of Commercial Law* 2009, 751. On the other hand, the single-member first instance court of Thessaloniki granted a psychological damages award in a case of denied boarding in its judgment 24072/2012, *Digest of Civil Law* 2013, 156; the case was rather exceptional, because the reason for denying boarding was a suspicion that the passenger was seriously ill, but this suspicion proved totally unfounded and the conduct of the air carrier employees regarding the passenger was rather intrusive.

ii Internal and other non-convention carriage

The national law on aviation is Greek Law No. 1815/1988, (the Aviation Code), which covers all aspects of public and private aviation law, such as registration of vessels and engines, proprietary rights over aircraft, including pledges, liens etc., aircraft leases and charters, etc. The Aviation Code contains provisions on air carrier liability for passengers, baggage and goods in national transport; however, because of Regulation (EC) No. 889/2002, the application of the Montreal Convention has also been extended to national transport with respect to liability for passengers and baggage. Of the liability provisions of the Aviation Code, therefore, only those relating to carriage of goods are still applicable in internal transport only.

iii General aviation regulation

Safety of flight operations of aeroplanes is regulated by Presidential Decree No. 173/2007, which implements JAR-OPS 1 (10th edition, 2006).⁹ In addition, Presidential Decree No. 66/2012 implements JAR 26 (3rd edition, 2005). For helicopters, Presidential Decree No. 64/2012 implements JAR-OPS 3 (5th edition, 2007). The regulation of flight operations safety is also supplemented by Ministerial Decision No. D15/A/18070/1501/2011, which implements into Greek law several international and European Union legislative instruments, including Annexes 6, 17 and 18 of the Chicago Convention. From the point of view of liability, all these provisions, which are quite detailed, make it much easier to establish liability in tort. Violation of any safety regulation is considered to be an illegality entitling legal action by any party suffering damage as a result of it. Moreover, violation of existing regulations makes it easier to establish fault (gross negligence in particular). Safety regulations are considered to be intended to protect individual interests and, hence, grant entitlement to legal action (*locus standi*).

iv Passenger rights

As Greece is a Member State of the EU, Regulation (EC) No. 261/2004 applies with respect to passenger rights in case of denied boarding, cancellation of flight and delays. Regulation (EC) No. 1107/2006 applies with respect to disabled passengers' rights.

There is no Greek equivalent to the ECJ precedents in cases C-402, 432/07, *Sturgeon*, and C-581, 629/10, *Nelson*, where it was held that Regulation (EC) No. 261/2004 does not infringe the Montreal Convention; the issue has not arisen before the Greek courts.

v Other legislation

Travel agents

The business relationships between air carriers and travel agents have resulted in massive litigation in Greece. Most of this litigation is directed towards debt collection against uncreditworthy travel agents and compensation claims brought by travel agents after

⁹ Joint Aviation Requirements for Commercial Air Transportation (Aeroplanes).

termination of business relationships. Travel agents do not contract with each air carrier separately, but with the International Air Transport Association (IATA), which represents all air carriers and intervenes as their agent. A standard terms contract is used, namely the IATA Passenger Sales Agency Agreement (Resolution 824). If an air carrier so wishes, it may agree on supplementary terms with specific travel agents separately. The IATA also offers clearing services to all air carriers in relation to travel agent transactions under its Billing and Settlement Plan. Case law has made it clear that IATA is acting as an agent only and that each carrier can individually bring a claim against an uncreditworthy travel agent. Moreover, a travel agent is not entitled to set off its debt to an air carrier with claims it may have against other air carriers, although clearing may take place through IATA.¹⁰

Greece has implemented Directive 86/653/EEC regarding the protection of commercial agents, by virtue of Presidential Decree No. 219/1991. Article 17 of the Directive provides that a commercial agent is entitled, under certain conditions, to indemnification or compensation in case of termination of its contract, for the clientele it has introduced to its principal. This provision has resulted in a standard litigation practice in cases of contractual termination against travel agents. The amount of the compensation can be as high as the agent's average remuneration during the five preceding years. Although travel agents in principle qualify as commercial agents and are protected under the Directive, recent case law has concluded that the other prerequisites for indemnification or compensation laid down in Article 17 will usually be absent (i.e., that the type of business relationship is not one that obliges or motivates the travel agent to actively promote sales for a specific and particular carrier and, therefore, the travel agent has not really contributed clientele to its principal).¹¹ Of course, this is a factual matter that may be different in each particular contract. Target incentives granted to travel agents could possibly be interpreted as motivating them to promote the sales of particular carriers only and could potentially result in compensation in cases of termination of business relationship.

Environmental

Greece has through Presidential Decree No. 148/2009 implemented Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. Further, with regards to the assessment and management of environmental noise, Greece has implemented Directive 2002/49/EC, as amended by Regulation (EC) No. 1137/2008, by way of Ministerial Decision 135/2006. Greece has also implemented Directive 2002/30/EC on the establishment of rules and procedures

10 Appeal Court of Piraeus, judgment No. 709/1996, *Commercial Law Review* [a Greek law journal] 1997, 53.

11 Greek Cassation (Supreme) Court (Areios Pagos), judgment 539/2012, published in *Nomiko Vima* [a Greek law journal] 2012, 1463 and Appeal Court of Athens, judgment No. 2475/2009, *Commercial and Business Law Review* 2009, 1108. See also the judgments of the Cassation (Supreme) Court (Areios Pagos) in Plenary Session Nos. 15 and 16/2013.

with regard to the introduction of noise-related operating restrictions at Community airports, as amended by Regulation (EC) No. 1137/2008, through Presidential Decree No. 80/2004.

In light of the aforementioned legal framework, Greece has also proved its environmental responsibility through many actions. More specifically, in 2014 Athens International Airport (AIA) received national recognition in the context of the Greek Business Awards for the Environment. AIA was placed first in the Management category and was also honoured with a Biodiversity award for its initiatives aimed at protecting the ecosystem in the Mesogeia area. These initiatives include an environmental monitoring team that identifies, records and positively influences the region's ecosystems. These two awards manifest the fact that protecting the environment remains a top priority for AIA and the entire airport community, despite the currently unfavourable economic situation. Last but not least, AIA has managed to reduce its carbon footprint by 33 per cent between 2005 and 2014, following the implementation of a series of energy-saving measures focusing on reducing consumption of electricity, natural gas and vehicle fuel.

III LICENSING OF OPERATIONS

As Greece is an EU Member State, Regulation (EC) No. 1008/2008 applies with respect to licensing and supervision of air carriers. In addition to Regulation (EC) No. 1008/2008, licensing and supervision is also governed by Greek CAA Decision No. D1/D/30817/2180/9.8.1991. As this Decision precedes Regulation (EC) No. 1008/2008, any provisions that contradict the provisions of the Regulation are considered to be inapplicable, and the Decision is considered to be a supplementary legislative instrument, which comes into operation only where there are gaps in the Regulation. However, most of the provisions of the Decision do reflect the provisions of the Regulation. A significant deviation of the Decision from the Regulation is that it provides that licensees should be owned by Greek majority interests (i.e., at least 51 per cent of the capital and voting rights of a legal entity applying for or holding an air carrier licence should be owned and controlled by Greek majority interest). As Greece is party to the EU and the principle of non-discrimination applies, this provision is interpreted to the effect that it is sufficient that majority interests are EU majority interests. So, a legal entity whose capital and voting rights are owned and controlled by EU majority interests (at a rate of 51 per cent at least) will be granted a licence, even if such EU majority interests are not Greek interests.

The regulator is the Greek CAA; this is the entity that grants, or revokes the operating licence and supervises air carriers. With respect to financial prerequisites, Article 5 of Regulation (EC) No. 1008/2008 applies. In practice, the Greek CAA always requires a net capital position (net assets) of at least €100,000, as a minimum requirement. A detailed and well-substantiated three-year business plan is of primary importance to obtain and retain an operation licence. Other prerequisites for obtaining and retaining a licence include: holding a valid air operator certificate (AOC); having the principal place of business within the country; possessing (through ownership, lease, charter or otherwise) one or more aircraft; complying with certain insurance requirements (see Section V, *infra*); having principal shareholders of good repute and a chief executive

and directors of good repute and having adequate knowledge of and experience in management and air navigation matters; having adequately skilled manpower from an air safety point of view; and having an accountable manager with both financial or management and technical or navigation knowledge and experience. In large companies the accountable manager has to be a separate position from the executive officers, but in small companies it may be the same position as the chief executive officer.

With respect to appropriate manning (i.e., post holders) Greece applies Regulation (EU) No. 965/2012 on technical requirements and administrative procedures relating to air operations. In compliance with this Regulation the Greek CAA has issued Decision No. 8/2014. As a result, an air carrier must have, in addition to an accountable manager, a flights operations manager, a crew training manager, a safety manager, a compliance monitoring manager, a cabin crew manager and a ground operations manager. All these persons must be notified to and approved by the CAA. It is not uncommon that the CAA will object to the appointment of any such manager, particularly the accountable manager, if it considers that he or she lacks the necessary qualifications. The practice is that the CAA insists that the accountable manager has substantial flying training and experience in addition to general technical knowledge and management experience. For air carriers with a total staff of fewer than 20 persons, these requirements are relaxed, in the sense that, in practice, it is possible that the same person may hold two different positions within the company. In some instances, it is also possible that some positions are outsourced.

Although the legislation raises no specific requirement as to the type of legal entity applying for an operating licence, in practice the CAA is unlikely to grant a licence to an entity that is not a *société anonyme*, (i.e., a public limited company); it suffices that the type and structure of the company is one of a *société anonyme*, even if it is controlled by a single shareholder. An individual (i.e., a natural person) is also unlikely to be granted a licence. Another express prerequisite is that air carriage of passengers or cargo or mail must be the main occupation of the licensed company. If there are other occupations, these must relate to aircraft operations or aircraft repair and maintenance services. As a standard practice, the CAA will also require, in addition to an air operator certificate a number of other certificates, such as airworthiness certificates, noise certificates, aircraft registration certificates and aircraft station certificates. The CAA will also request the submission of any aircraft lease, or charter agreements.

i Licensed activities

While licensed activities are determined by Article 3(3) of Regulation (EC) No. 1008/2008, under Greek law ‘local flights’ require an operating licence as well, although these are excluded by Article 3(3) of the Regulation.

A closed company, with a limited number of members, offering private air transport services to its members, requires an operating licence as well, but a private air sports club does not.

ii Ownership rules

As discussed, a legal entity licensed by the Greek CAA must be owned and controlled by EU majority interests. Legal entities that are controlled by majority interests of third (non-EU) countries do not qualify for a Greek CAA operating licence.

iii Foreign carriers

Air carriers licensed by any other EU Member State are allowed to operate in Greece, as well, provided their actual place of business is not within Greece, but in some other EU Member State. Air carriers licensed from third countries (non-EU countries) enjoy overflight rights, provided they are licensed by some ICAO member state. By way of Regulation (EC) No. 2111/2005 and Regulation (EC) No. 474/2006 the EU has established a periodically renewed list of air carrier operators that are banned from operating within the EU, for air safety reasons. The most recent amendment of this list was in 2014, by way of Regulation (EU) No. 1318/2014 .

IV SAFETY

With respect to safety, the Greek CAA concentrates mainly on compliance with the post-holder requirements of Regulation (EU) No. 965/2012 (see Section III, *supra*).

i Investigation of accidents

A total of 25 serious aviation accidents have been reported in Greece since 1947. During the past 20 years, Greece has seen five major accidents. In 17 December 1997 a Ukrainian Yakovlev 42 operated by Aerosvit Airlines, flying from Odessa to Thessaloniki crashed in the Pierian mountains at an altitude of 1,200 metres because of bad weather conditions and difficult mountain terrain, with 74 victims (42 Greek). Three days later a Greek air force Lockheed C-130 Hercules aircraft crashed just outside Athens at Pastra mountain, because of bad weather conditions; the five members of the crew were killed. The aircraft was due to transport soldiers to the Pierian mountains to take part in operations to recover the Ukrainian Yakovlev. In 2009 a Dassault Falcon Mystere 900 used by the Greek government for VIP transportation suffered severe turbulence and lost control over Romania while carrying a Greek minister and 12 other governmental officers; 12 of the officers, including the minister were killed. In September 2004 a Chinook CH-47DG helicopter of the Greek air force carrying Patriarch Peter VII of Alexandria along with 16 others (including journalists and three other bishops of the Church of Alexandria) crashed into the Aegean Sea while en route to the monastic community of Mount Athos, arguably after an explosion. None survived. The cause of the crash remains unknown. The deadliest accident in Greece and one of the mostly discussed worldwide occurred in August 2008, when a Boeing 737-800 operated by the Cypriot air carrier Helios crashed just outside Athens, at Grammatiko mountain, killing 121 passengers and crew members.

Investigation of accidents is regulated by the following instruments of law:

- a* Regulation (EU) No. 996/2010, on the investigation and prevention of accidents in civil aviation; this Regulation has repealed Directive 1994/56 EC;

- b* Directive 2003/42 EC, on occurrence reporting in civil aviation, as amended by Regulation 596/2009 EC; this has been implemented into Greek law by virtue of Presidential Decree No. 120/2006;
- c* The 9th edition of Annex 13 of the Chicago Convention (1944); this is applicable under Greek law, even after the entry into force of Regulation (EU) No. 996/2010;
- d* Greek Law No. 2912/2001, which implemented Directive 1994/56 EC, but is still applicable, even after the entry into force of Regulation (EU) No. 996/2010; and
- e* Presidential Decree No. 59/2004 setting the rules of the internal operations and procedures of the Greek Air Accident Investigation and Air Safety Board (AAIASB).

Greek legislation adopts the conceptual distinction between ‘accident’ and ‘serious incident’. An ‘accident’ is an event relating either to death or serious injury of a passenger or crew member, or damage to the aircraft. A ‘serious incident’ is an event that nearly results in an accident.

The investigation is carried out by a committee (panel) of investigators appointed by the president of the AAIASB. The AAIASB is an independent body, empowered with wide investigative capacities. According to Article 5 of Law 2912/2001, it enjoys administrative independence and is supervised by the Ministry of Transport. The investigators appointed are obliged to submit the draft of their final report to the AAIASB within a period of six months from the date of the accident. Following this, the AAIASB issues its final report within three additional months.

Pursuant to Annex 13 of the Chicago Convention, the purpose of Greek legislation regulating accident investigation is to reinforce air safety and to prevent future accidents; investigation is not oriented towards identifying or allocating blame or liability. The emphasis of the investigation, therefore, is to identify the causes of the accident, so as to prevent similar accidents in the future and to issue air safety recommendations, if necessary. Article 1(1) of Regulation (EU) No. 996/2010 provides that: ‘This Regulation aims to improve aviation safety by ensuring a high level of efficiency, expediency and quality of European civil aviation safety investigations, the sole objective of which is the prevention of future accidents and incidents without apportioning blame or liability.’ This provision is also reflected in Article 4(1) of Greek Law No. 2912/2001, which provides that the sole purpose of the investigation is to identify the causes of the accident or the serious incident. However, in practice, investigation reports, by identifying the causes of the accident, inevitably shed light on aspects such as blame, fault, negligence, intent and liability, both civil and criminal. Usually they are quite illuminating on liability issues, particularly with respect to allocation of fault, negligence and contributory negligence. Such reports almost always have great impact on both civil and criminal litigation. They are not conclusive and do not constitute absolute evidence as such, but they provide

a reliable basis to prove facts that can assist a court to identify fault and liability. In practice, it is extremely difficult to challenge AAIASB reports before Greek courts, either civil or criminal.¹²

Greek Law No. 2912/2001 on air accident and serious incident investigation reflects the provisions of both Annex 13 of the Chicago Convention and Regulation (EU) No. 996/2010. Article 11 provides that the states where the aircraft is registered, the state of the aircraft operator, and the state of the aircraft's manufacture and design may participate in the investigation by appointing an authorised representative and technical advisers. Indeed, the proceedings of the investigation secure a close cooperation between the several states involved, such as the states that are closely related to the commercial operation and exploitation of the aircraft, the state where the aircraft was manufactured and constructed, etc. Although not specifically mentioned in the Law, in practice, in the case of serious accidents, the states of citizens who were on board are also invited to participate. Article 13 provides that the states that participate in the investigation shall receive a draft of the final and any interim investigation report and that they will be granted a 60-day period to submit observations. Any observations that are accepted by the investigation committee are included in the report, while any observations that are not accepted are attached as an annex to the report. The aircraft operator and the aircraft manufacturer may also receive provisional drafts of the interim and the final report and submit observations, but always acting through their respective governmental supervising authorities and regulators. The final report is made public. Article 22 provides that the AAIASB, after the publication of the final report, may grant access to files to any person that has a legitimate interest (*locus standi*), subject to certain confidentiality restrictions intended to protect privacy and personal data. During the investigation proceedings any other criminal investigation or procedure may be suspended for a period of up to one year. Limitation periods (prescription) are also suspended. Article 23 provides that an investigation that has been finalised with the publication of the final report may be reopened only in exceptional circumstances and subject to a time limit of three years as from the publication of the report. After the publication of the final report, the AAIASB may issue air safety recommendations. However, the AAIASB has authority to issue safety recommendations even before the finalisation of the investigation proceedings, if it considers that there is an immediate risk of future accidents.

V INSURANCE

There is no local market for aviation insurance. Aviation insurance cover is obtained mainly in London and the United States. Article 137 of the Greek Aviation Code provides for compulsory insurance. The air carrier is obliged to obtain insurance cover in respect of liability to passengers, baggage and cargo. In addition, the operator of any aircraft is obliged to obtain insurance cover in respect of liability to members of the crew and other persons on board who are employed for the purposes of the flight, as well as in respect of

12 Judgment No. 1667/2008 of the Administrative Court of Piraeus provides a good example of how accident investigation reports are relied upon by the courts.

liability to third parties for damage caused on the surface. However, Greek legislation on the matter has actually been superseded by EU legislation on aviation insurance, which is directly applicable in Greece. Although the law provides for compulsory insurance for the benefit of passengers and cargo owners and other third parties, it does not grant to such third parties a right of direct legal action against the insurer. It has, therefore, been decided by Greek courts that a direct action against the insurer lacks *locus standi* and if the air carrier becomes bankrupt, any insurance compensation becomes part of the property of the bankrupt and is administered by the liquidator for the benefit of all creditors as a group; the claimants, (i.e., passengers, or relatives of passengers, and cargo owners, or other third parties, for the benefit of whom compulsory insurance is established, enjoy no lien or other preference or priority over insurance compensation).¹³ Under Greek law aviation risks are considered to be ‘large risks’, even if they relate to small aircraft. Articles 4(E) and 13(3) of Legislative Decree 400/1970 (as amended) provide that the parties are allowed to choose freely any foreign law to govern insurance policies for large risks, even if the insured risks are situated within Greece only. As a result, almost all aviation insurance policies are governed by English or US law. Regulation (EC) No. 785/2004, on insurance requirements for air carriers and aircraft operators, provides for compulsory insurance of both air carriers and aircraft operators in respect of passenger, baggage, cargo and third parties; the insured risks to be covered, on an each-and-every flight basis, include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion. According to Regulation 1137/2008 EC, the EU Commission is empowered to adapt the required minima amounts of insurance cover. Regulation 285/2010 EU has revised the minima amounts of insurance cover as follows: (1) in respect of liability for passengers, 250,000 SDR per passenger, and for non-commercial operators this figure can be as low as 100,000 SDR; (2) in respect of liability for baggage, 1,131 SDR per passenger in commercial operations; (3) in respect of liability for cargo, 19 SDR per kilogram in commercial operations; (4) in respect of liability to third parties, the minimum insurance cover per accident for each and every aircraft ranges from 0.75 million SDR up to 700 million SDR, depending on maximum take-off mass. Compulsory insurance is provided also by Article 50 of the Montreal Convention, as well as by Article 7 of the EU Licensing Regulation (Regulation (EC) No. 1008/2008). The former provides that states that are party to the Convention shall require their carriers to maintain adequate insurance covering their liability under the Convention, and the latter provides that an air carrier shall be obliged to obtain insurance to cover liability in case of accidents with respect to mail.

VI COMPETITION

As Greece is a Member State of the EU, national law on competition (i.e., Law No. 3959/2011) is identical to the corresponding EU law with respect to both

¹³ Greek Cassation (Supreme) Court (Areios Pagos), judgments No. 179/2014, published in *Commercial Law Review* [a Greek law journal] vol. 2014, 908 and No. 180/2014 *Chronicles of Private Law* [a Greek law journal] vol. 2014, 525.

anti-competitive agreements and concerted practices (Article 101 TFEU) and abuse of dominant position (Article 102 TFEU) and merger control (i.e., Regulation (EC) No. 139/2004). Moreover, as a result of Regulation (EC) No. 1/2003, competition law is applied by both the Competition Committee and the courts, and there is an allocation of competence, as well as a close cooperation, between the national Competition Committee and the European Commission. The precedents of the ECJ and CEU and EU Commission Decisions are also of great interpretative value under national law.

Under Greek competition law there is severe criminal liability for corporate executives, in both cartel and abuse of dominant position cases, but not for legal entities themselves. Legal entities can be fined by the Competition Committee in the context of administrative proceedings, but there is no criminal liability as such for legal entities. There are no disqualification orders for corporate directors under Greek law, not in competition law or under any other field of law. Fines are calculated on standards similar to those provided under EU law.

The most notable recent development in the local market from the point of view of competition was the merger between the two large local air carriers, Aegean and Olympic. The merger procedure began in February 2010, but in January 2011 the European Commission announced its objection to approving the initial schedule for the concentration. Following a new merger agreement between the parties and a new notification to the Commission in February 2013, the Commission finally approved the merger in October 2013, on the grounds that Olympic was a failing firm and would go out of business anyway. Olympic has never been profitable since its privatisation in 2009 and it had received considerable financial support from its sole shareholder. It was evident that Olympic was highly unlikely to become profitable in the foreseeable future under any business plan, and its sole shareholder had decided to discontinue support. Investigation has also confirmed that there was no other credible purchaser for Olympic or its assets. Therefore, the Commission concluded that any competitive harm caused by Olympic's disappearance as an independent competitor was not caused by the merger itself.¹⁴

VII ESTABLISHING LIABILITY AND SETTLEMENT

i Procedure

The legal basis for claims is usually either the Montreal Convention, or Regulation (EC) No. 261/2004. Claims can be brought before the courts, but for claims arising from Regulation (EC) No. 261/2004 there is a special complaints procedure administered by the Greek CAA. Liability is basically civil, based on both contract and tort. Greek courts accept that liability can be concurrent, (i.e., both contractual and in tort). The limits of compensation of the Montreal Convention apply in respect to liability in tort as well.¹⁵ However, as discussed earlier, there are rather conflicting court precedents as to whether

14 European Commission, Press Release dated 9 October 2013 (IP/13/927).

15 See case law: Multimember First Instance Court of Athens No. 2229/2010 and Appeal Court of Athens 1531/2011, *Commercial Law Review* [a Greek law journal] 2011/861.

awards for psychological damages escape the limits of the Montreal Convention. In cases where death or injury is involved, there is also criminal liability of the directors and officers of the air carrier;¹⁶ in cases of death or serious injury, criminal proceedings are initiated by the state, even in the absence of any initiative on the part of the injured party. Criminal liability attaches to individuals only (i.e., directors and officers of air carriers). There is no corporate criminal liability under Greek law.

In cases of serious accidents involving death, in addition to the air carrier, its directors and officers are likely to be joined in the proceedings as defendants. Their liability is one in tort and is based on personal fault and negligence (i.e., not strict liability). In such cases, directors attempt to prove absence of personal fault (i.e., that there was no violation of regulation on airworthiness, that safety, training and maintenance procedures were strictly followed and that any past recommendations were complied with, etc.).¹⁷ Another case where directors are usually relieved from civil liability is when it is proved that the accident was due solely to human error by the crew.

Aircraft manufacturers and designers have also been made parties to the proceedings as defendants. The legal grounds again are liability in tort based on negligence, and product liability.

In a couple of cases claims were raised against the state itself for failures by air traffic controllers. The courts found that liability was established.¹⁸ Liability of the state can also be established in cases of inefficient or inadequate supervision of air carriers and failure to effectively enforce the regulation with respect to air carriers' supervision and safety.

Complaints under Regulation (EC) No. 261/2004 can be addressed either directly to the air carrier or to a special department of the Greek CAA. Usually complaints are filed with air carriers themselves and recourse to the CAA is employed only in cases where the air carrier is inactive or refuses to comply with the Regulation, particularly if the air carrier refuses to pay the compensation provided under Article 7 of the Regulation. When the CAA receives a complaint, it forwards it to the relevant air carrier with a request to respond. Should the air carrier not respond within a period of about two months, or should the explanations submitted not be satisfactory according to the judgment of the CAA, the CAA imposes a fine. The amount of the fine is €1,000 for flights up to 1,500 kilometres, €2,000 for all flights within the EU exceeding 1,500 kilometres and all other flights from 1,501 kilometres up to 3,500 kilometres, and €3,000 in all other cases. Fines, ranging from €1,000 up to €3,000 can also be imposed if the air carrier fails to provide reimbursement or rerouting under Article 8 of Regulation (EC) No. 261/2004.

16 See, for example, judgment No. 1015/2013 of the Greek Cassation (Supreme) Court (Areios Pagos) on the criminal liability for the Helios Airways aviation accident, which is one of the most discussed air accidents in Greece and worldwide.

17 The Court of Appeal of Athens relieved directors from civil liability on such a basis in its judgment 7603/2001 published in *Commercial & Business Law* [a Greek law journal] 2002, 82.

18 Council of State (Supreme Court), judgments 3055 and 3056/2014 and judgment 1402/2009.

If the air carrier fails to provide care pursuant to Article 9 of the Regulation, fines can range from €500 up to €2,000 per passenger.¹⁹ In the event of a fine the air carrier can appeal to the administrative courts. In 2014 there were 931 complaints (an increase of 22 per cent from 2013), with 761 related to delays, 79 related to flight cancellations, 38 related to loss of baggage, 36 related to denied boarding and 17 related to other causes.

Under Greek case law passengers are, in principle, entitled to compensation for psychological distress, additional to that provided under Article 7 of Regulation (EC) No. 261/2004, although, in practice, courts are rather reluctant to find that facts evidencing such distress have been established and that there is something more than a mere breach of contract, which alone cannot lead to an award for psychological distress.²⁰

A similar complaints procedure is established for delay in delivering or loss of baggage incidents. Delay or loss of baggage is governed by the provisions of the Montreal Convention and Regulation (EC) No. 889/2002. Complaints for damage to checked baggage must be filed within seven days. Complaints for delay in delivering checked baggage must be filed within 21 days as from the date that delivery ought to take place. In relation to baggage that it is not checked, complaints must be filed as soon as possible. In addition to the compensation of 1,000 SDR provided under the Montreal Convention and Regulation (EC) No. 889/2002, Greek courts are likely to award compensation for psychological distress, although at quite low rates, (i.e., from €500 to €1,000 approximately).

Both the Montreal Convention and the Greek Aviation Code (Article 155) provide for a two year-limitation period that covers most claims relating to air transport, aviation insurance and other claims arising from aviation law.

ii Carrier's liability towards passengers and third parties

Liability in respect of baggage and cargo can be concurrent liability in both contract and tort;²¹ in both cases it is fault (negligence) based.

Liability for passengers is strict, even beyond the figure of 100,000 SDR. Article 21 of the Montreal Convention is very strictly and narrowly applied. The only realistic way that an air carrier could possibly exclude or limit liability (for an amount exceeding 100,000 SDR) would be contributory negligence of the passenger (i.e., only under Subsection (b) of Article 21(2)). For those air carriers that have acceded to the IATA Inter-carrier Agreement on Passenger Liability (1995), the 100,000 SDR limit does not apply, as it has been voluntarily waived.

19 The legislative instrument fixing the volume of fines is Ministerial Decision No. D1/D/13770/980/14.4.05.

20 Appeal Court of Athens 1531/2011, *Business & Company Law Review* [a Greek law journal] 2011, 936, Appeal Court of Thessaloniki 1199/2009, *Review of Commercial Law* 2009, 751, Greek Cassation (Supreme) Court, *Areios Pagos*, 39/206, *Chronicles of Private Law* 2006, 451.

21 Appeal Court of Thessaloniki 1199/2009, *Review of Commercial Law* 2009, 751.

iii Product liability

Greece has implemented Directive 85/374/EEC on product liability, as amended and currently in force. Implementation took place by virtue of Article 6 of Greek Law No. 2251/1994, as amended, on consumer protection. The Directive is one of full harmonisation, so local law cannot be interpreted to set more favourable standards of protection for injured parties. Although currently there is no publicly reported case law on product liability of aircraft manufacturers,²² product liability is potentially valid legal grounds for claims against aircraft manufacturers arising from aviation accidents. Product liability can also give rise to claims for psychological damages. Aircraft manufacturers will usually invoke lack of causation, the defences of Article 7 of the Directive,²³ as well as lack of the legal concept of 'product defect'.²⁴

iv Compensation

With respect to liability for passengers, Greek courts will award psychological (moral) damages, (i.e., compensation for psychological distress). In cases of death, the claimants are the relatives of the deceased. Relatives can potentially include spouse or husband, children, parents, grandparents, grandchildren, uncles, nephews, persons living with the deceased without a formal marriage, children born out of marriage, etc. All these have *locus standi* to bring a legal action for psychological damages, so long as they can establish that they had a close personal relationship with the deceased and that they suffered psychological distress as a result of the deceased's death.²⁵ The amount of psychological damages will differ depending on the proximity of the affinity, but, in general, psychological damages awards are rather generous in Greece in comparison with other jurisdictions. Examples include an award by an appeal court in 2007 of €35,000 to a child for the death of one of his parents;²⁶ the award by another appeal court in 2005 of €100,000 in a similar situation;²⁷ the Court of Appeal of Thessaloniki awarded in 2001 €37,000 to a person for the death of his brother;²⁸ while the Cassation Court in a similar

22 Note however that there is abundant case law on product liability of car manufacturers and this case law could be relevant to claims against aircraft manufacturers also.

23 Particularly that the state of knowledge at the time the aircraft was put into circulation was not such as to enable to discover the defect in question, or that the defect was not present when the aircraft was put into circulation.

24 That is, that an aircraft cannot be considered defective for the sole reason that a better aircraft has been subsequently been put into circulation, as per Article 6(2) of the Directive.

25 Greek Cassation (Supreme) Court, Areios Pagos, in Plenary Session, judgment 21/2000, published in *Greek Justice* [a Greek law journal] vol. 42, p. 55. Similarly, Cassation Court No. 619/1977, *Nomiko Vima* [a Greek law journal] vol. 26, 162.

26 Appeal Court of Dodoni No. 9/2007; judgment No. 243/2006 of the same court awarded in a similar case €30.000.

27 Appeal Court of Thessaloniki, 2384/2005.

28 Appeal Court of Thessaloniki 2834/2001.

situation approved in 2008 an award of only €15,000.²⁹ Courts enjoy great discretion to determine both the quantum of psychological damages and the proximity of relatives who are entitled to such an award. As to the quantum, a major factor to be taken into account is the type of fault of the air carrier and the level of its negligence. Another major factor is the level of dependence of the relatives on the deceased passenger (e.g., young children are expected to receive a generous award in the event of the death of a parent). From the point of view of conflicts of laws, if the law applicable to the tort (claims for psychological damages are claims in tort) is Greek law (usually it is Greek law, if the accident occurred in Greece), then it is Greek law that will determine whether relatives (and which relatives) are entitled to claim psychological damages. As a result, the relatives of a non-Greek air accident victim are entitled to psychological damages, even if they are not so entitled under the law of the citizenship of the victim. It is the law applicable to the tort that is material to determine those who are entitled to psychological damages and not the law of citizenship.³⁰ Nonetheless, the law of the citizenship will determine whether someone is a relative or not; this will usually relate to the issue of whether there has been a valid marriage rendering two persons relatives (e.g., husband and wife).

There are judgments that have awarded psychological damages in cases of destruction of baggage,³¹ but as noted earlier other judgments were reluctant to award psychological damages in cases of long flight delays, flight cancellation or delay in delivering baggage, on the grounds that this is only breach of contract, which does not of itself give rise to psychological distress.

VIII THE YEAR IN REVIEW

The most notable development during 2015 was the financial failure of a major travel agent in both Greece and Europe, namely Air Fast Tickets, which was of Greek interests and management. The total financial deficit that Air Fast Tickets has left in the European market is said to be about €45 million. Debt collection proceedings have been initiated.

IX OUTLOOK

A restatement and amendment of the Greek Aviation Code has been pending for many years now. There have been two legislative committees that have made two different proposals for amendment. Although the modernisation of aviation law has not been

29 Cassation Court 666/2008. Similarly judgment 1255/2007 of the Cassation Court approved an award of €30,000 for the death of a brother. See also judgment 242/2008 and 717/2008 of the Cassation court, approving awards of €30,000 to a brother, while approving double the amount to parents for the death of a son.

30 Greek Cassation (Supreme) Court, Areios Pagos, Plenary Session, judgment No. 10/2011. Also Greek Cassation Court judgments Nos. 222/2014, 1308/2013, 207/2012, 345/2012, 528/2011, 525/2010, 581/2010 and many others.

31 Appeal Court of Athens 1531/2011, *Commercial Law Review* [a Greek law journal] 2011/861 and County Court of Thessalia 7757/2012.

a priority of Greek governments during past years, there is a great deal of pressure from the market for certain legislative amendments, particularly regarding registration of aircraft and engines, aircraft mortgages and liens.

Appendix 1

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