

Małgorzata SZWEJKOWSKA*,
Kacper MILKOWSKI**

**NATIONAL JURISDICTION WITH RESPECT
TO OFFENCES COMMITTED ON BOARDS
OF AIRCRAFTS VS PRIVATIZATION PROCESSES
IN THE CIVIL AVIATION SECTOR
- SELECTED ISSUES**

Summary

The objective of this paper is to analyse the influence of ownership transformations in an airline industry, that can be observed nowadays, on the jurisdiction performed by states regarding offences committed on board of an aircraft. In the light of 1963 Tokyo Convention, each state is authorized to apply its law (broad jurisdiction) to all persons, things and activities within its territory (territorial jurisdiction), and to its citizens and legal persons wherever they are or act – including national ships and aircrafts – even if they are outside their home country (flag state competence). But are the states of registration of an aircraft really interested in exercising their jurisdiction on offences committed on board of an aircraft, if this aircraft is used by a foreign entrepreneur? Therefore, it should be noted that bilateral and multilateral agreements in the field, in particular those relating to regular air services, are of a major importance for the nationality of aircraft operators, and that the ownership of an aircraft is considered to be: indirect, alternative or parallel to the issue of the ownership of an aircraft company.

Key words: *offence committed on board of an aircraft, jurisdiction of a state, ownership of an aircraft, the state of registration of an aircraft, privatisation of the airline industry*

* Małgorzata Szwejkowska Assistant professor of UWM, Faculty of Public International Law, Faculty of Law and Administration University of Warmia and Mazury (UWM) in Olsztyn

** Kacper Milkowski MA, PhD student at Faculty of Public International Law Faculty of Law and Administration, University of Warmia and Mazury (UWM) in Olsztyn

Introduction

Undoubtedly, in the airline sector worldwide, dominant airlines are the ones controlled by states (the weaker an internal economy, the greater chance of airlines being controlled by a state, due to a lack of investors)¹. It is a result of many conditions, including historical ones – state ownership of own airlines emphasised their prestige and national pride, also it was for reasons such as defence, a development of the labour market, getting profits from tourism and so on². However, a process of air transportation globalisation observed for a long time, resulted in need of gaining financial resources for the development of this expensive department of a national economy³. The economic situation of so called flag carrier is usually unfavourable, which is a result of unskilful management, generating financial losses in the core business, or it is caused by lack of right understanding of consumers' needs. At the same time, barriers that limited the access of other entities to such activity until recently, have disappeared. A big competition entails an important role of surveys, which are supposed to determine customers preferences, subsequently adjusting to specific needs, e.g. a convenient network of connections, professional service, and at the same time – which is of a great importance – lowering the prices of services⁴. Therefore, as far as competition in the aviation industry is concerned, it may be characterised as 'a process, by which air carriers aiming to reach their goals, attempt to present to clients better offers regarding price, quality or other features that influence a decision to buy an air transport service'⁵. Generally, one may state that the national airlines find it more difficult to cope with 'a fight' for a client on the free market, which results in the mentioned problems. It should be emphasised that – as academic literature indicates – states present a measurable interest in maintaining loss-making

¹ It should be mentioned that until the mid-1980s, except for e.g. the United States, almost all major airlines belonged to states - S. Shaw, *Airline Marketing and Management*, Edit. Routledge, London – New York 2016, p. 63.

² *Ibidem*.

³ M. Polakowska, *Perspektywy globalizacji komunikacji powietrznej*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2006, n. 3, p. 117.

⁴ K. Biskup, *Prawne, administracyjne i ekonomiczne uwarunkowania działalności lotniczej w Polsce*, Uniwersytet Kazimierza Wielkiego, Bydgoszcz 2014, p. 62.

⁵ A. Radomyski, *Zarządzanie przedsiębiorstwem na rynku usług lotniczych w warunkach silnej konkurencji*, Akademia Obrony Narodowej, Warsaw 2007, p. 28.

national carriers. Firstly, countries treat such airlines as a tool to implement own political plans, which often have no economic dimension. Secondly, customers – nationals of a given country, emotionally relate to national carriers, forcing governments to airlines financing, or a subsidy, in one word a privileged treatment. Finally, the national airlines are perceived as a symbol, and a kind of a business card of a given state⁶.

The goal of privatisation is regaining profitability or an improvement of flexibility of a given state company. It may be obtained by a change of the airlines operation strategy, and then by an ownership transformation, allowing for new investors search, who will be able to take them over⁷. It should also be noted that in the airline industry, one can deal with a liberalisation and deregulation of procedures, which have started in the USA after 1978, whereas in Europe a decade later⁸. It resulted in the appearance of the airline services of new carriers on the market, including the low-cost ones. It forced a lot of airlines due to unprofitability or very poor financial standings, to connect with others, which had much better financial condition. The mergers occur when a stronger absorbs the weaker, often saving an airline from a bankruptcy. The example can be, British Airways (Great Britain) that merged with Iberia (Spain) creating in 2010 a holding IAG, or in the USA Delta merged with Northwest in 2008⁹. Moreover, there are alliances concluded among companies, which are supposed to improve competitive positions (due to a partnership with other airlines, carriers reduce costs, increase a number of connections, what would be impossible on such a scale, if acting independently)¹⁰. However,

⁶ Therefore, the national carriers aircrafts are chosen as objects of terrorist attacks.; I Lelieur, *Law and policy of substantial ownership and effective control of airlines: prospects for change*, thesis, Faculty of Law, Institute of air and Space Law, McGill University, Montreal 2002, p. 7.

⁷ Z. Pierścioneł, *Zarządzanie strategiczne w przedsiębiorstwie*, PWN Publisher, Warsaw 2011, p. 314, 328.

⁸ G. Zając, *Podstawy prawne i funkcjonowanie przewoźników lotniczych i lotnisk w Europie*, Rambler, Warsaw 2016, p. 213.

⁹ Ibidem, p. 215.

¹⁰ K. Biskup, *Alianse strategiczne – rozwiązaniem problemu upadających przedsiębiorstw lotniczych*, „Studia z Zakresu Prawa, Administracji i Zarządzania Uniwersytetu Kazimierza Wielkiego w Bydgoszczy” 2013, v. IV, p. 208.

a problem of privatisation in the recent years refers to LOT Polish Airlines, TAP Air Portugal¹¹, or Aeroflot Russian Airlines¹².

The aim of the paper is to analyse how ownership transformation in the aviation sector influence state jurisdiction exercising in terms of offences committed on boards of aircrafts. A state is entitled to use own law (broad jurisdiction) to all persons, objects and activity within its own territory (territorial cooperation), as well as to all its nationals and legal persons wherever they are, or work, also in relation to aircrafts and ships, even if they are outside a home country (flag state competence)¹³. It should be noticed that the above rules are not universal as a coexistence of many sovereign states and their territorial competences are subject to certain modifications. It causes a problem of reconciliation of the competences by their demarcation, or recognition of their hierarchy, or proceedings in the event of various states conflict of rights¹⁴.

1. A State sovereignty rule in the airspace . An aircraft definition

The airspace constitutes an element of a state territory, next to land territory and sea territory. Therefore, each state sovereignty also extends to airspace within the limits of vertical planes, perpendicular to the state borders. The space is not clearly defined from a top¹⁵. Usually, fixing this upper limit based on the lowest points of orbits of artificial earth satellites is proposed; atmospheric density, where the flights of classic aircrafts, not spaceships are still possible, or the final height of the stratosphere, ionosphere or exosphere¹⁶.

The state sovereignty rule within airspace limits exceeding over its territory, was customarily developed during the First World War, together with the development of aviation, leading to a specific

¹¹ B. Zagrobelny, *Prywatyzacja linii lotniczych TAP*, [online] https://portugal.trade.gov.pl/pl/aktualnosci/129077_prywatyzacja-linii-lotniczych-tap.html [access: 21.11.2017].

¹² D. Sipiński, *Aeroflot uratuje budżet Rosji?* [online] <http://www.pasazer.com/news/29202/aeroflot,uratuje,budzet,rosji.html> [access: 21.11.2017].

¹³ M. Żylicz, *Prawo lotnicze międzynarodowe, europejskie i krajowe*, Wolters Kluwer Polska, Warsaw 2011, p. 193.

¹⁴ *Ibidem*, p. 195.

¹⁵ T. Srogosz [in:] *Prawo międzynarodowe publiczne*, J. Barcik, T. Srogosz (ed.), C. H. Beck, Warsaw 2017, p. 310.

¹⁶ *Ibidem*, p. 308.

colonization of the airspace. A year after the end of the War, on the initiative of France, the international conference was convened in Paris. In the Convention in Paris from 1919, in the first such multilateral agreement¹⁷, a definition of an aircraft was formulated¹⁸, as well as the idea of a State's sovereignty was adopted in its airspace, and the rule (resulting most of all from safety reasons), that all aircrafts must have a specific nationality. Next, the provisions were also reflected in the internal legislation of the States involved in Paris Convention. The aircraft definition was modified during a development of another multilateral contract regarding these issues, that is provisions of the Chicago Convention on International Civil Aviation from 1944.¹⁹ In the final version, which was included in the annex to the mentioned Convention, it was assumed that an aircraft 'means any machine which can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface'. According to this definition, the aircrafts are not only planes, or helicopters, but also sailplanes, par gliders, hang gliders, or parachutes, or unmanned aircrafts (drones)²⁰. It should be mentioned that the Polish legislator, adopted in the Aviation Law²¹ in a glossary include in Article 2, a broader definition compared to the one enclosed in the Chicago Convention. Therefore, Polish Aviation Law defines an aircraft as a machine able to derive support in the atmosphere from the reactions of the air other than the reactions of air against the earth's surface. From the above definition, all types of machines equipped with rocket engines, which are able to put into space different kinds of cargo and hovercrafts, were excluded²².

¹⁷ The Convention arranging the air navigation, signed in Paris of 13 October 1919 (Journal of Laws from 1929 No.6, item 54 as amended). Until the preparation and acceptance of the Convention in Paris within air navigation, the rules and regulations established by states in the individual bilateral agreements were applied.

¹⁸ The Paris Convention from 1919, recognised an aircraft as 'any machine which can derive support in the atmosphere from the reactions of the air'.

¹⁹ The Convention in International Civil Aviation, signed in Chicago of 7 December 1944 (Journal of Laws from 1959, No. 35, item 212 as amended).

²⁰ T. Srogosz, *op.cit.*, p. 311.

²¹ The Act of 3 July 2002 – Aviation Law (Journal of Laws from 2013, item 1393 as amended).

²² M. Żylicz, *Prawo lotnicze – komentarz*, Published by Wolters Kluwer Polska, Warsaw 2016, p. 41.

2. The nationality of an aircraft and the territoriality rule

An aircraft is a movable property, of a specific law nature. Starting with the Paris Convention from 1919, a rule was adopted that it must benefit from a given state protection, so is subject to the state nationality. The rule belongs to the principles of the international aviation law. At first, different criteria were proposed to determine the nationality of the aircraft, including a production of aircraft or a place of residence of its owner²³. Finally, the view prevailed that the basis for determining the nationality of such aircraft is an obligation to its registry in a given state (between the state, in which a given aircraft was registered, and the aircraft itself, a specific public-law bond is created, which entitles to the control and care over the aircraft). However, according to the provisions of Paris Convention, the registry was possible only if the aircraft was owned by a citizen (citizens) of the registrant state (in case of commercial law companies it meant among others, a requirement of the company's head director and at least 2/3 of its directors to have a citizenship, Article 6 of the Paris Convention). In the Chicago Convention, the above requirement was significantly alleviated. In the light of Article 19, it is each state – The Convention side determines who and on what basis may register (or transfer a registration) an aircraft in the country. Consequently, they are countries that decide, whether they allow a registration of the foreign aircrafts²⁴. However, none of the aircrafts can be registered in more than one country – Article 18 of the

²³ J. Walulik, *Progressive Commercialization of Airline's Governance Culture*, Published by Instytut Wydawniczy EuroPrawo, Warsaw 2015, p. 30.

²⁴ However, only few countries worldwide allow for a registration of the foreign aircrafts in own internal regulations., e.g. the Netherlands – J. P. Honig, *The legal status of aircraft*, Published by Martinus Nijhoff, Leiden 1956, p. 30. For example, in the United States, a requirement of registering an aircraft defines an owner to be a citizen of the United States, or possess a permanent right of residence on the territory of the USA; a partnership, if each of partners is the citizen of the USA; a legal person organised according to the United States law, or the State law, or Columbia District, or the USA dependent territories, in which a head director, and at least 2/3 of directors and employees managing, possess a citizenship of the United States, and at least 75% of shares or stock is controlled by the citizens of the USA; the USA government unit (subunit); a foreign legal person, which was created and is a subject to the federal law or the state law, provided that the aircraft is most of all used to flight operation in the airspace of the United States - https://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/register_aircraft/ [01.10.2017].

Convention. The information regarding a registration is passed to the International Civil Aviation Organisation – ICAO (Article 21 of the Convention).

The main consequence of this rule implementation is need to provide control, safety, and the acceptance by a given state a responsibility for an aircraft, bearing its flag during international flights²⁵. Though it should be noted that the nationality of an aircraft (Article 17 of the Chicago Convention) did not lead to the development of carriers' (airlines) national concept. These two ideas have been created independently from each other, and mutually interacted with each other²⁶.

The principle of nationality entails a number of implications, including – as it was already mentioned in the introduction – a way of defining jurisdiction for offenders, who committed crime on board of an aircraft, what falls under the international aviation criminal law. These issues are subject to regulation of so called Tokyo – Hague – Montreal system²⁷.

In Poland, according to a territorial rule – Article 5 c.c.²⁸. – The Polish Penalty Law shall be applied to a perpetrator, who committed unlawful act on the territory of the Republic of Poland, as well as on Polish aircraft or vessel, unless the international agreement, in which the Republic of Poland is a party, provides otherwise. The operation of territoriality principle was extended in the Penal Code, in relation to prohibited acts committed outside the Republic of Poland. The Polish Penal Code applies to unlawful acts committed on Polish vessel, as well as on an aircraft, regardless where the units are during the offence²⁹.

²⁵J. P. Honig, op.cit., p.30

²⁶Ibidem, p. 31 and literature available there.

²⁷The system consists of the following acts of international law: Tokyo Convention on offences and certain other acts committed on board aircrafts, drawn up in Tokyo of 14 September 1963; The Hague Convention of 16 December 1972 on prosecuting perpetrators of aircrafts, and The Convention for the suppression of unlawful Acts against the safety of Civil Aviation, done at Montreal, 1 October 1971, together with the Montreal Protocol of 24 February 1988.

²⁸The Act of 6 June 1997 - The Penal Code (that is Journal Laws from 2016, item 1137 as amended).

²⁹W. Wróbel, *Kodeks karny. Część ogólna. Tom I. Część I. Komentarz do art. 1-52*, 5th edition, Published by Wolters Kluwer Polska, Warsaw 2017, el./LEX; J. Giezek, *Kodeks karny. Część ogólna. Komentarz*, 2nd edition, Published by Wolters Kluwer Polska, Warsaw 2012, el./LEX; B. Kunicka-Michalska [in:] *Kodeks karny. Komentarz*, R. Stefański (ed.), 3rd edition, Published by C.H. Beck, Warsaw 2017, el./Legalis; B.

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Consequently, a term of the 'Polish' aircraft should be explained. According to Article 17 of Aviation Law, in which a legislator included the issues of the nationality of aircrafts, they have nationality of a State, they were registered in. Thus, the Polish aircraft means the aircraft registered in Poland. The registry inventory of aircrafts, according to Aviation Law, belongs to tasks and competences of the President of the Civil Aviation Agency (Article 34 § 1 of Aviation Law). In Poland a registry of aircrafts is conducted in an open manner, which means, that everyone has an access to the enclosed information (Article 34 § 1a of Aviation Law). Not only the mentioned documents, which were basis for a registry entry, are disclosed to the interested entity³⁰. However, it should be noticed that in case of a registration of aircrafts, owned by private persons, the provisions of the Act of 29 August 1997 on the protection of personal data will be applied³¹. The registry, a change of register data, and a removal from the register, are held in the mode of an administrative decision. According to Article 31 of Aviation Law, the entry to a registry of civil aircrafts, is a result of the nationality of an aircraft, and it entails a submission of an aircraft to a supervision obligation to aviation authorities of the State nationality. The legal consequences of aircrafts registry, determined by several countries, are evaluated according to the international regulations. If an aircraft is registered into a registry inventory of different states at the same time, only the first registry is valid.

State competences of the aircraft registration as far as jurisdiction implementation is concerned, in cases regarding offences committed on board of an aircraft, are connected with the registered aircraft, as it was previously mentioned. The basic Convention regulating criminal jurisdiction of the state of an aircraft registry, is The Convention on offence and certain other acts committed on boards of aircrafts, drawn up

Namysłowska-Gabrysiak [in:] *Kodeks karny. Część ogólna. Komentarz*, M. Królikowski, R. Zawłocki (ed.), 4th edition, Published by C.H. Beck, Warsaw 2017, el./Legalis; A. Gałązka [in:] *Kodeks karny. Komentarz*, A. Grześkowiak, K. Wiak (ed.), 4th edition, Published by C.H. Beck, Warsaw 2017, el./Legalis.

³⁰ M. Żylicz, op.cit., p. 178 i n.

³¹ The Act of 29 August 1997 r. on the protection of personal data (Journal of Laws from 2014, item 883 as amended).

in Tokyo of 14 September 1963³². According to Article 3 paragraph 1 of the Convention, The State of an aircraft registration is competent to implement jurisdiction in cases of offences and other acts committed on its board. However, the Convention does not exclude totally a penal jurisdiction, carried out according to the internal law (Article 3 paragraph 3). In the light of Article 1 paragraph 1, the Convention's provisions are applied to: 1. offences provided for in penal law, 2. acts, that regardless whether they are crimes may expose, or pose danger to an aircraft, an individual, or property on board, or acts, which violate order and discipline on board. However, it refers only to acts committed during a flight of a civil aircraft³³ (excluding acts committed on boards of military planes, customs or the police aircrafts – Article 2 paragraph 4 of the Convention). The Convention also regulates: a range of rights and obligations of the captain of the aircraft within scope mentioned above; State duties, where an aircraft landed (after the crime has been committed); release of the aircraft to its owner, if it was hijacked. Whereas Article 4 of the discussed Convention denotes that a contracting state, which is not the state of the aircraft registry, cannot interrupt the aircraft's flight, in order to implement criminal jurisdiction in relation to an offence committed on board, except for cases when: a) an offence had an effect on the territory of the State; b) an offence was committed by the citizen of the State or in relation to such citizen, by an individual possessing a permanent place of residence in the State; c) an offence violates the safety of the State; d) an offence is a violation of all regulations and provisions concerning a flight or plane manoeuvring,

³² The Convention of 14 September 1963 on offences and certain other acts committed on board aircrafts, (Tokyo Convention), (Journal of Laws from 1971 No. 15, item 147 Annex).

³³ Article 1 paragraph 2: *Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State. Subject to Article 5 paragraph 1 - The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State, unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.*

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applicable in the State; e) the jurisdiction implementation is necessary in order to ensure a respect of all State's obligation, resulting from a multilateral international agreement.

Before Tokyo Convention came into force, regulations concerning the exercise of jurisdiction in terms of prohibited acts committed on board of aircrafts during international flights were varied and they were essentially international in nature, based on internal regulations. The purpose of the Convention was unification and codification of valid rules, and development of appropriate conflict rules. The right to prosecute the perpetrators and conduct proceedings in terms of determining their criminal liability, when an offence was committed on board of an aircraft, the Convention granted to the State of an aircraft nationality (a range of court jurisdiction was expanded in terms of criminal offences, exercised by the state beyond the borders of its territory – extra territoriality)³⁴. Ipso facto, penal law of the state generally applies to all (except for the discussed cases) prohibited offences, committed on board of an aircraft registered in the state, regardless a perpetrator's citizenship or a lack of it³⁵. As a consequence of the acceptance of extra territoriality concept, the aircraft does not become a constituent element of the national territory³⁶.

Tokyo Convention eliminated existing loopholes, thus no proprietor of an offence committed on board could avoid responsibility for the offence, (previously, it mainly referred to the prohibited acts committed on board of the aircraft, during a flight over the areas, not subject to the jurisdiction of any country)³⁷.

³⁴ S. Shubber, *Jurisdiction over crimes on board aircraft*, Brill, Hague 1973, p. 45-47.

³⁵ P. Kozłowska – Kalisz [in:] *Kodeks karny. Komentarz*, seria Komentarze Praktyczne, M. Mozgawa (ed.), Wolters Kluwer, Warsaw 2017.

³⁶ J. Lachowski [in:] *Kodeks karny. Komentarz*, V. Konarska - Wrzosek (ed.), Wolters Kluwer Polska, Warsaw 2016.

³⁷ See a case *United States v. Diego Cordova* (U.S. District Court E.D. New York, 1950. 89 F. Supp. 298): Diego Cordova in 1948 was a passenger of the American Airlines from San Juan to New York. During a flight, over the Atlantic (so called high seas) he hurt three of fellow passengers; criminal proceedings were instituted against him, no less the case was discontinued due to the fact that the United States, which led the proceedings, were not entitled to the jurisdiction of law enforcement committed on high seas; Article 1 paragraph 2 of Tokyo Convention: 'Subject to the provisions of Chapter III, this Convention shall apply to offences and acts committed by the person on board of an aircraft registered in the contracting State when the aircraft flies over an area of high seas, or an area outside the territory of any State'.

3. The transfer of an aircraft registry due to privatisation of an airline

According to Article 18 of the Chicago Convention, it is impossible to have a multiple registration of an aircraft. It cannot be validly registered in more than one country, however its registration may be transferred from one country to another one. In case of registering an aircraft in more than one country, the rule of *prior in tempore potior in iure*³⁸ is applicable, meaning the earlier in time – stronger in law. The possibility of a registration transfer is very important in a process of privatisation, as it allows for takeover of a given airline together with its air fleet by another airline – an investor. By privatising, the countries attempt to secure their own business. For example, a future investor, who takes over TAP Air Portugal, will be obliged to cover financial liabilities of the unit in the amount of about 1 billion Euros. Moreover, one will not be able to change the nationality of airlines (the carrier will function under the flag of Portugal), and also will be obliged to keep the main airport of a bought TAP airline on the territory of the State. It was also suggested that flights to autonomous district of Portugal will be kept³⁹.

However, in Article 19 of Chicago Convention, it is stated that a registry or a registry transfer of an aircraft transfer should take place in each of the contracting states, according to laws and regulations of that state. Thus, a transfer of the aircraft of one state registry to the registry kept in another state, follows the rules applicable in both states, and according to binding international provisions. If an aircraft was registered in the Polish register and will be used – e.g. on the basis of a lease agreement, or tenancy – by an entity, which main place of activity or, if there is no such a place, a place of a permanent residence, or a headquarter is in another country, then a whole supervision, or part of it may be transferred to the aviation authorities of that country (Article 83 of Montreal Protocol, altering Chicago Convention⁴⁰). In Poland, such operation is performed through the agreement between the President of

³⁸ A term compiled based on : I. Kamińska – Szmaj, *Słownika Wyrazów Obcych, cz. 2 - Sentencje, Powiedzenia, Zwroty*, Published by Europa, Warsaw 2001.

³⁹ TAP Portugal, [online] <http://www.tapportugal.com/Info/en/home> [access: 11.11.2017].

⁴⁰ The protocol was prepared in Montreal on 6 October 1980, Journal of Laws from 2002, No. 58, item 527, quoted after M. Polakowska, op.cit., p. 119-120.

the Civil Aviation Authority and aviation authorities of that country, which takes whole or partial subject responsibility. Whereas, in a case of an aircraft registered in a foreign aircrafts registry, and will be used by an entity, whose main place of operation, or if there is no such place, a place of permanent residence, or a headquarter is on the territory of the Republic of Poland, then all, or part of a supervision may be given to the President of the Civil Aviation Authority based on agreement between the President of the Civil Aviation and aviation authorities of the country where the aircraft was registered. The President of the Civil Aviation informs ICAO and aviation authorities of the interested countries regarding the transfer of supervision.

4. The influence of registration change on aviation security

It should be noticed that a change of registration country of a given air unit is of great importance, because of the use of specific legislative systems, in particular the ones connected with protection of civil aviation. Within ICAO activity, standards of international aviation security were enclosed in Annex no. 17 to Chicago Convention, which is titled: 'Civil Aviation against acts of unlawful interference'⁴¹. The minimum standards of aviation protection were determined, which countries– parties are supposed to oblige. However, each country may expand a catalogue of responsibilities towards airlines, what frequently happens⁴². Therefore, a problem of lowering safety may occur, through activities like privatisation of national carriers, then registration in countries, which require the fulfilment of minimum standards. More attractive will be countries, in which a policy towards aviation is more liberal. It is worth to mention that it is a result of existing competition on the air transport market, caused by the development of cheap airlines, and consequently a lowering of plane ticket prices⁴³.

⁴¹ Annex 17 to the Convention on international civil aviation 'International Civil Aviation against acts of unlawful interference', adopted on 20 March 1974, Official Journal of Civil Aviation Department No. 18, item 109.

⁴² G. Zając, *Międzynarodowy wymiar prawno – funkcjonalny bezpieczeństwa transportu lotniczego* [in:] *Prawo lotnicze i technologie*, E. Dynia (ed.), Published by Uniwersytet Rzeszowski, Rzeszów 2015, p. 80.

⁴³ S. Zajas, *Restryktywna i liberalna polityka lotnicza oraz ich wpływ na rozwój lotnictwa cywilnego*, „Zeszyty Naukowe AON” 2014, no. 3(96), p. 252.

There are a lot of forms by which a change of property possession occurs (lease agreement, tenancy). Each country that allows for international flights over its territory, wants to know who owns the aircrafts and whose capital they represent⁴⁴. Due to the fact that the nationality of aircrafts does not confirm the above, a nationality of an individual exploring an aircraft is of great importance. It should be pointed out that internationally, determining a specific company to operate, connected with international aviation transport and consequently, taking the responsibility, as well as protection of its business, creates presumption of belonging to a state, where a company is registered. With a reference to both internal law, and international private law on ownership, and on designating a company by a given country, a place of registration or a business headquarter, may be decisive, as well as a main place of business activity, owners citizenship or members of the board, and in case of individual owners – a place of their permanent residence. In the event of lack of a different contract, a country may treat a given company according to own law⁴⁵. However in reality, a freedom of states' decisions was limited in this aspect, as the overwhelming majority of regulations connected with international transport aviation is signed in the form of bilateral agreements between individual countries⁴⁶. Contracts are secured by a right to revoke air traffic rights. In a situation when a given foreign carrier does not possess a majority share or a real control over an entity, it may lose related rights⁴⁷. It should be noticed that, in some of bilateral and multilateral agreements, particularly the ones referring to a regular air service, an issue of nationality of entities using aircrafts is of great importance, whereas aircrafts nationality 'has indirect, alternative or concurrent relevance'⁴⁸.

The development of an air transport exacted in the creation of new assumptions concerning aviation law, mainly connected with the economic sector. In practice, it turns out that , the nationality of an aircraft is not a sufficient requirement to protect rights and interests of

⁴⁴ M. Polakowska, op.cit.

⁴⁵ M. Polkowska, op.cit., p. 122.

⁴⁶ M. Żylicz, *Międzynarodowy obrót lotniczy. Zagadnienia ekonomiczno-prawne*, Szkoła Główna Planowania i Statystyki, Warsaw 1972, p. 202; K. Myszona, *Status prawny przewoźnika lotniczego*, Legal Publishing House PWN, Warsaw 2000, p. 23

⁴⁷ M. Polkowska, op. cit., p. 122.

⁴⁸ Ibidem.

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the aircraft use. Parties in the bilateral agreements, more often appeal to a specific category of companies' rights that uses these type of engines. It is a change of a tendency, as concerning principles of law and requirements linked to use of aircrafts by companies are adopted only with a regard to aircrafts themselves, due to their place of registration, not to entities that use them, whose nationality was not taken into account⁴⁹.

It should be noticed that the possibility of airlines inspection registered in another countries, so far based mostly on a criterion of aircrafts nationality, does not counteract the introduction of 'a foreign flag', or a capital of non-member States for specific air routes, which were determined and are used between contracting parties. More frequently it is required that aviation law of a specific country regulate ownership issues – e.g. so as national carriers were owned and under a strict supervision of a specific state. The carriers are also expected to prove that they keep all the time the nationality of the country determined in a register⁵⁰. It can be noticed e.g. that the United States, which in fact are first in a liberalization of provisions concerning aviation, a foreign investor cannot possess more than 50% of shares in the ownership of a given American enterprise. It can also have maximum of 25% in a total number of votes in the Company's Management Board. Also Canadian law concerning an issue of ownership and supervision is similar to American one. Moreover, according to the *National Transportation Act*, a licence for national routes may be owned only by a citizen of Canada, unless a Minister competent of transport decides that it is a public interest to introduce an exception to this criteria. Similarly, a process of obtaining an international licence, for scheduled and non-scheduled flights, was regulated⁵¹. Thus, the privatisation of airlines in the mentioned above countries of North America, due to rigid regulations is very difficult.

⁴⁹ A document AT Conf/4-WP/18, [in:] Zbiór dokumentów na światową konferencję transportu lotniczego, zorganizowaną przez ICAO, 1994 in Montreal.

⁵⁰ P. Van Fenema, *National ownership and control provisions remain major obstacles to airline mergers*, „ICAO Journal” 2002, no. 7, p. 7; H. Wassenbergh, *Principles and Practices in Air Transport Regulation*, Institute of Air Transport, Paris 1993, p. 90 and next.

⁵¹ I. Lelieur, op. cit., p. 50.

Conclusions

Trends of global economy have concentrated on the internationalisation of markets in basic transport areas for many years. Today, a possibility of airlines to go beyond the national framework, also enforces changes in regulations connected with the civil aviation. The development of international entities, in which a capital of many foreign individuals is involved, and entities are placed in various countries, resulted in a difficulty in determining a clear dividing line, which would allow for a precise definition of 'national responsibility' (in English *national responsibilities*). Legislators in individual countries are forced to refer to pointed above trends, as airlines gradually will lose their national character. The processes may be quicken by noticeable in the recent years gradual liberalisation of provisions connected with air transport in the European Union and the possibility of competition among air carriers in other countries, inter alia in Australia and New Zealand⁵². In the era of progressive globalisation, only two strong economies become involved – the United States and Canada.

In this context, it seems logical to grant competences to pursue and conduct proceedings concerning offences committed on aircrafts board in international flights, to a state where the aircraft is registered, and should be interested in expanding national jurisdiction in this regard. However, in the light of mentioned processes concerning globalisation and privatisation of aviation, an essential issue is the fact that most often an aircraft is registered in one country, but used – based on various contracts – by airlines of another one. It obviously causes that a country of an aircraft registration usually is not interested in pursuing offences committed on board of such aircraft⁵³. Such attitude is possible in the light of Tokyo Convention provisions, as it introduces a state jurisdiction competence, not the obligation to perform it⁵⁴. It should also be reminded that in part of bilateral and multilateral agreements, particularly

⁵² R. Doganis, *Flying off course the economics of international airlines*, Psychology Press, London 2002 p. 48 and next.

⁵³ M. Milde, *International air Law and ICAO* [in:] *Series: Essential Air and Space Law*, M. Benkö (ed.), Eleven International Publishing, Hague 2008, p. 214.

⁵⁴ Other states outside a state of registration may be competent to pursue and conduct proceedings on offences committed on board of the aircraft, performing an international flight, only in cases described in Article 4 of Tokyo Convention.

the ones relating to air services, an issue of the entities nationality using aircrafts is of great importance, whereas the aircrafts nationality 'has indirect, alternative, or parallel meaning.'

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