



VIII CONFERENCE ON AIRPORT LAW

ORGANISED BY THE
WORLD WIDE AIRPORT
LAWYERS ASSOCIATION AND
ATHENS INTERNATIONAL
AIRPORT

ATHENS, 10-11 SEPTEMBER 2015

SESSION 8: LIABILITY OF AIRPORTS - PRINCIPLES AND
PRACTICES



Universiteit Leiden
The Netherlands



Airport law - civil liability

OVERVIEW

- ❑ Status of airports under international and national law
- ❑ Claims arising in the following circumstances
 - Service provision, as to which see relationship with other service providers such as:
 - Airlines
 - Ground handling service providers
 - Security agencies
 - ATC
 - Environmental damage
 - Safety of aerial operations
- ❑ Conclusions



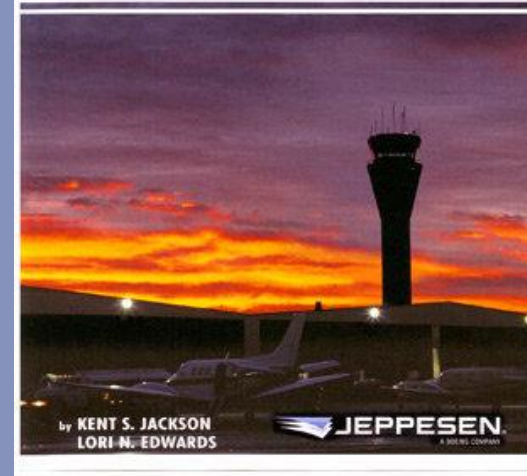
Airport law - civil liability

□ STATUS OF AIRPORTS UNDER INTERNATIONAL AND NATIONAL LAW

- Airports as stationary installations
 - subject to national law of the State of location
- No harmonisation of national legislations under European law, see Single European Sky regime (SES)
- Applicability of tort law and contractual liability, as the case may be
- In some cases: (Insurmountable) hurdle of sovereign immunity under national law and case law; see:
 - Terrorist attacks at Athens airport on 5 August 1973 involving the liability of the airline (TWA) as the airport was exclusively managed and owned by the Greek government
 - US: possible reliance on Federal Sovereign Immunity Act, for ATC – but see State law under which airports have been held liable
 - ‘Snow’ case at Teheran airport involving US departing passengers
- In many – other – jurisdictions no immunity from claims which are put forward under civil or administrative procedures

FEDERAL AVIATION REGULATIONS
EXPLAINED

AIRPORT EDITION



Airport law – civil liability

CLAIMS ARISING IN THE FOLLOWING CIRCUMSTANCES

- **Service provision, see:**

1. Airlines

- Liability of airlines for “accidents” causing bodily injury or death between “embarkation” and “disembarkation” at airports pursuant to the Montreal Convention, 1999 (MC99) or the Warsaw Convention, 1929, as amended), on an *exclusive* basis
- Airport ‘agent’ of the carrier benefitting from limitations of MC99?
- Case law, especially in the US, determining these notions, identifying:
 - Supervision by the airline (or not)
 - Location of the passenger
 - Activity – what was the passenger doing
- See ‘accidents’ in the following circumstances:
 - Passengers lining up for security check
 - (handicapped) passengers using rolling escalator
 - Baggage having been picked up from belt



Airport law - civil liability

2. Ground handling service providers (GHSP)



- In a “considerable” (ICAO) number of cases part of airport operations
- GHSP “agent” of the air carrier; hence, protected by limitations set by MC99 (or WC29) with respect to claims from passengers
- See also the aforementioned ‘exclusivity’ principle
- See Art. 8(2) of the Standard Ground Handling Agreement of IATA:
“The Carrier shall not make any claim against the Handling Company in respect of damage, death, delay, injury or loss to third parties caused by the operation of the Carrier’s aircraft arising from an act or omission of the Handling Company in the performance of this Agreement unless done with intent to cause damage, death, delay, injury or loss or recklessly and with knowledge that damage, death, delay, injury or loss would probably result.”
- Subject to litigation – see case law (*Air New Zealand/Ringway*; *TAECO v. Cargolux*; *Malenstein v. Korean Airlines*)
- Tendency to mitigate liability of the air carrier

Airport law – civil liability

3. Security agencies

- Varying status under national airport regimes
 - Government agency (AENA, Spain)
 - ‘agent of the carrier’ –
 - see status of GHSP;
 - see for instance claims in relation to the *Lockerbie* accident (1988)
 - Independent undertaking
 - Subcontractor or body of the airport through ‘vicarious liability’
 - see Athens International Airport, and Denmark –
 - airport liability through ‘vicarious’ liability

- Again, question of ‘sovereign immunity’ depending on status and circumstances, see 9/11 claims against security companies at Boston Logan airport, settlement reached



Airport law - civil liability

4. Liability for environmental And safety related damages

➤ Emissions – see EU ETS/ airlines

➤ Noise

❑ Airport liability for damages caused by noise
– hindrance; depreciation of value

❑ Again depending on local law and circumstances

❑ Civil or administrative procedures

❑ US: airport liability acknowledged under State law for depreciation of value in, for instance, *Irving v. Los Angeles Airport*

❑ *JAL v. Port Authority of New Jersey & New York*: airport liability acknowledged in connection with lack of de-icing of runway

❑ Defences of airport (immunity; compliance with policy and regulations)

❑ See also case law in France (involving the liability of *Aéroports de Paris*) and Switzerland, under the reasonableness test

❑ More protection for airports under Germany and UK law



Airport law - civil liability



CONCLUSIONS

- ❑ Absent international and European law, lack of unification or harmonisation of regulations
- ❑ No template for claims involving airport liability
- ❑ See relevance of:
 - Status of the airport operator under national law
 - Possible reliance on sovereign immunity
 - Applicability of tort law, negligence, duty of care and contractual relations with other service providers
 - Civil and/or administrative procedures
 - Case law
- ❑ Subject in full legal swing!

Ευχαριστώ!

