



# Air law and economic policy

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## ABSTRACT

Paper addresses the air law and economic policy and the future trends in these fields. Principles and sources of this branch of law are specified in the context of civil aviation. The situation, where we can find civil aviation law in cooperation with economic policy is the economic regulation of airports.

**KEYWORDS: air law, sources of law, civil aviation, economic policy, and regulation of airports**

## 1. Introduction

The Air Law is a very specific system of law and the state or some international organization has the legal power to control the observance of it. The air transport is international and there are development trends towards consolidation / unification. There is a very strong relation between the international air law, national air law and EU law.

The classic demarcation between national and international law, and between private and public law, is also applicable in the air law. Private international law, in this context, means the body of rules pertaining to the relations between private persons involved in the operation and use of aircraft, whereas public international law is the corpus of legal norms pertaining to the relations involving states and international organizations in respect of those activities.

The Air Law is a body of rules governing the use of airspace and its benefits for aviation, the general public and the nations of the world. The term aviation law is still being used in several handbooks. In fact it has become obsolete, like its counterpart navigation law. On the other hand, the designation air transportation law, which has been employed on occasions, offers the disadvantages of representing only one sector of air law and thus conveying too narrow interpretation. Currently the term aeronautical law is also being used, especially in the Romance languages, where expressions like *droit aeronautique*

and *diritto aeronautico* are commonly employed side by side with *droit aerien* and *dritto aereo*. In the present treatise the term air law has been adopted, which is a current practice. The study of air law is relevant for number of reasons [1]:

- Air law is interlinked with other areas of law on several points. It involves many aspects of constitutional law, administrative law, civil law, commercial law and criminal law. Its international element, however, is always paramount,
- Air law offers a striking example of how existing legal rules can be swiftly adapted to the impressive technological progress achieved in recent years.

## 2. The autonomy of air law

The point has been raised on several occasions whether it was altogether necessary to introduce a special body of rules to govern the airspace. This line of thinking led, in turn, to the question of whether the air law was to be regarded as an area of law *sui generis*, consisting of rules of a typically distinctive nature.

### 2.1. Sources of Air Law

The following classification may provide some useful guidance: multilateral conventions, bilateral agreements, and national law, contracts between states and airline

companies, contracts between airline companies, general principles of international law.

Multilateral conventions are the primary source of air law. In stating this fact it is very important that the air law has taken on its international character and emerged on an international plane almost from the very beginning, i.e. following the first flights between Paris and London. Paris Convention was concluded in 1919, the year in which that flight took place. Due to the rapid developments in aviation and with the law-makers attempting to keep pace, the custom has largely been bypassed as a source of law, the result being that the air law today consists mainly of written law.

## 2.2. Sources of Air Law in the Slovak Republic

In the Slovak Republic (SR) there is legislation giving powers to the National Slovak Council, the Government, the Ministry, and the Councils of self-governing regions.

Act No. 143/1998Coll. on the civil aviation and on amendment and supplement of some other legislation is the basic Slovak civil aviation legal act. The authorization for Ministry of Transport, Posts and Telecommunications of the SR is issued by law and by the national standards. The background of Act No. 143/1998Coll., on the civil aviation is in the Chicago Convention. The Slovak Republic is a member state of the International Civil Aviation Organization (ICAO). The Convention on International Civil Aviation, also known as the Chicago Convention, established the ICAO in 1944. ICAO standards and other provisions are developed in the following forms: Standards and Recommended Practices - collectively referred to as SARPs; Procedures for Air Navigation Services - called PANS; Regional Supplementary Procedures - referred to as SUPPs; and Guidance Material in several formats.

## 2.3. Sources of air law in EU

The European Union – the name of this organization was not chosen randomly from the handbook. It was chosen on the basis of the mission of the organization, namely the realization of two particular ideals, those of Europe and Union, which each carry a legacy of rich, complex and contradictory associations. Europe may be the territory which stretches from the Atlantic in the West to the Urals in the East, and Europeans, the people of the territory. The development of European ideals and the government of the problems of contemporary Europe are implemented almost exclusively through the EU law. After the accession to the convention of EU, the EU law for our country is very important and we have to implement EU legislation in our national legislation and the same situation

is in the air law. The EU air transport legislation is composed of rules in several subject areas: economic policy, air traffic management, safety, security, environmental matters, social matters, passenger protection, and external relations. The air transport policy was developed by the European Community (EC) from 1977 until the present. This process is unique since it is the first time that a group of countries together has developed a comprehensive mandatory air transport policy. It is different from the ICAO approach in the sense that particular importance has been attached to the economic aspects of such a policy, and in that the rules are mandatory without the possibility of Member States filing differences: the EU rules are there to be applied with the force of national and European law as appropriate. Because of its specific nature, both from a public and commercial point of view, it must be underlined that safety has to be a vital element of any air transport policy.

Most EU law-making is carried out within the community pillar. Central types of legal instrument in the Community law comprise: regulations, directives, decisions, recommendations and opinions. Regulations shall have general application. They shall be binding in their entirety and directly applicable in all Member States, they are mostly centralizing all the Community instruments and are used wherever there is a need for uniformity. From the date of resolution they are automatically incorporated into domestic legal order of each member state and require no further transposition. Directives are binding as to the result to be achieved. They leave the choice as to forms and methods used to implement them to the discretion of Member States. Usually 18 or 24 months after publication - by which time Member States must transpose their obligations into the national law. Decisions shall be binding in their entirety upon those to whom they are addressed. Recommendations and opinions shall have no binding force [2].

## 3. Economic policy in Europe

Some famous critics declare: “Policies change law, but law does not change policies.” In the civil aviation it is a different situation, because the air law can change economic policy in civil aviation. And what is the relationship between politics and economics?

Politics and economics are closely linked and often affect each other. I want to examine the linkage between political forces, which usually create law and economic changes. Different legal systems operating in various member countries of the EU offer another example of economic diversity. The law exists to provide formal guidelines and rules to govern the behaviour of individuals and

organizations. Failure to comply with the law means that penalties will be inflicted by the courts depending on the seriousness of the offence. Although the law changes over time, it may only do so over a long time-period and may lag behind important economic changes which are taking place in a country. In many cases, it is not economic changes which lead the way of changes in the law, but ambiguities in the law itself which are challenged in the courts. It may be that a long-term harmonization of the EU law is achievable since countries are already used to making alterations or introducing laws which reflect changes in economic attitudes. Economic policy coordination is an element of economic union. Since policy coordination, whether on monetary or fiscal policy, involves an element of political union. This process is now happening in EU, though the progress towards economic and political union will ultimately depend on the will of Europe's leaders and people. There is a tension within EU policy-making between the tendency to regulate and the encouragement of national governments and authorities to deregulate. This is often a concern of business.

The emphasis has now shifted towards deregulation and privatization as the route to international competitiveness. And that is the place, which is very important for air transport market and civil aviation. The current aims of the transport policy are to establish a single market for all forms of transport, allowing free access to the market in each member state, and environmentally sustainable. Liberalization of all forms of transport is also in progress. This has proved the most difficult aspect of transport policy.

### 3.1. Air Transport Market and Economic Policy

In the air transport market, three successive deregulation packages agreed between 1987 and 1993 created the condition for opening up the competition in the European market. In particular, uniform criteria have been introduced for operating licences, full cabotage is now available, allowing airlines to fly and pick up passengers on any European route, and controls on fares have been removed [3].

### 3.2. Economic Orientation of Airports

The question is: "Are airports in a better hand with the state ownership or private ownership?" What does privatisation of airports mean? Why do we need privatisation? Privatisation is defined as the transfer of more than 50 per cent of the ownership of a business from the public sector to the private sector. Privatization came to be seen as a "quick-fix" method of creating a private sector in economies where all enterprises had traditionally been in the hands of the state. Now it is the era of low-cost companies, with

full private ownership. The full state ownership of airports is changing to private ownership, which is more effective. This puts pressure on airports to get more efficient airport services. Airports have always been recognized as an essential component of the national aviation system, they were only considered as being a platform providing the necessary services to airlines operations, without having a specific role in the air transport market development. As a consequence, commercial activities were not much developed by airports. This explains why airports property was always publicly managed while commercial activities, when needed, were outsourced to private companies.

## 4. Privatization of airports

Big changes in the air transport network structure are coming from airlines bankruptcy and airlines consolidation, too. The onset of low cost companies has influence on the changes in airport services. All these changes in the demand for airport services associated to the lack of capacity at some airports showed the importance of the investment issue for airports. Indeed, the traditional airports management model, fully dependent on state decisions, revealed not enough response to quick and deep changes affecting the air transport market.

Aware of this lack of efficiency, most of European governments tend now to consider airports as potential profit-making enterprises and tend to change the airport ownership and management model. Typical of some European countries (such as Spain, Greece, Poland, etc.), airports remain owned and managed by the state. Two main trends tend to develop in Europe: devolution and privatization of airports. They are completed by evolutions in the management models.

Devolution consists in a definitive transfer of jurisdiction by the central government to a distinct juridical entity under public law. In this case airport management can be either done by the owner or outsourced. The airport devolution consists in transferring part or full of the airport ownership from the states to regions, city council, local authority and/or chamber of commerce [4].

The objective of such a change in airport status is to give the airports a larger autonomy (in particular in the financial planning) by directly involving local and regional authorities in their strategies of development. This form of devolution is therefore generally the first step before a privatization. States having chosen such changes in airport status indeed often aim in a further step (not yet planned) at transferring part or all of the airport ownership to private companies.

On the other side privatization consists in selling part or all of the airport ownership and management to a private company. In the case of partial privatization, devolution

can be combined with privatization. The objective of the devolution with privatization is to give the airport a commercial orientation [5]. Since they aim at optimizing the rate of return on their investments, private investors have stronger incentives for cost control and efficiency, as well as for seeking new revenue opportunities. A public-private partnership can be considered as being the first step toward privatization.

#### 4.1. Types of Privatization

The privatization of airports can be partial or full. In the case of partial privatization, the national state still owns a share of the airport while in the case of full privatization the airport fully belongs to private investors.

The full privatization of an airport leaves a total freedom to the airport owner and manager to choose the way to maximise the airport profit. In the case of full privatization operations relative to the infrastructure as well as to the management are made by a private company that aims at earning revenues to cover the infrastructure investments and earn a fair return on investments.

The next trends in the airport evolution are new characteristics of multi-airport management. Indeed the management of several airports goes from a management of all the airports of a country in the case of state ownership and management to a management of several airports in a given country or in different countries. If this can be a priori surprising this does not mean that the objectives of profit maximising are not reached. Indeed, owning and managing several airports located in the same metropolitan areas may be a success key to improve the economic efficiency of all these airports. In particular, owning the primary as well as secondary airports of the metropolitan area may be an efficient way to control the competition level between the airports and to develop complementary airports. Hence, the natural trend of secondary airports to focus on niche markets stressed by De Neufville. They can be more easily and efficiently controlled so as to be not only profitable for the secondary but also for the primary airport [6].

In Europe, multi-airport ownership in a metropolitan area exists in London, Paris or Frankfurt. In United Kingdom, the British company BAA indeed owns and manages London Heathrow, London Gatwick and London Stansted airports. In France, ADP owns and manages both Paris airports: Orly and Charles De Gaulle. In Germany, Fraport owns and manages Frankfurt main airport and owns 65% of Frankfurt Hahn airport.

An additional trend is the investment in the ownership of several airports located in different geographical areas in the same country. For instance in Germany, Fraport owns 30% of Hannover airport and 51% of Saarbrücken airport.

The last trend in Europe are the investments in the ownership of foreign airports. For instance the UK Company BAA owns 75% of Budapest airport.

## 5. Economic regulation of airports, yes or no?

All these factors have substantial influence on economics of the airport. The relevant moment is to find the balance between the airport capacity and expenses on it. The fundamental cost items are staff costs, maintenance expenses, depreciation, amortization and impairment (operating expenses). There has to be a balance and suitability between the expenses and revenues. The basic idea of business is the effort of achieving a profit. The fundamental revenue items are airport taxes, parking fee, security fee, handling revenue, landing fee, financial revenue and other commercial revenues.

The situation on the air transport market is difficult. In the past it was a regulated market, then the deregulation process on the world's air transport market started and now we are thinking about regulation on the liberalized market. Economic regulation of natural monopoly demand shoots up on the air transport market. The question is, if the airport is the natural monopoly or not? The Samuelson localized the position of air transport somewhere in the middle between a natural monopoly and perfect competition.

The specialists claim that the airport is geographically limited natural monopoly. This position is very important. The regulators secure compliance with rules of maximum level of aeronautical charges. The legal environment plays an important role for the airport competitiveness. In particular regulations on the aeronautical charges that are different between countries will impact the airport competitiveness as compared with other airports.

The competition from other airports is at best limited, if not non-existent. Market powers enable airports to raise their prices, and to extract rents from the customers. Therefore the rationale for regulating airports has seldom been questioned. Regulation aims at controlling costs and prices, and quality of services.

## 6. Conclusion

The right answer to the question is that the policy can change the law and law can change the economy. In the last example, we can see that the answer is really related to the economic regulation of the airports. In most of the countries, the functions of ownership and regulation are not separate, and regulation lacks transparency. The European

Commission proposes to have a single regulatory system all over the EU, with an independent regulator in each country. In the year 2009 the Directive of the European Parliament and of the Council on Airport Charges was issued – Directive 2009/12/EC, which is a common framework regulating the essential features of airport charges. EU presents the necessity of economic regulation of airports and airport charges. On the basis of this directive, the airports have to change their economic policy. That is the result how law can change the economic policy.

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