








Contract Structures in the Field of Air Carriage

Nataliia Fedosenko¹  , Andriy Starodubtsev¹ , Anton Stiebieliev¹,
Valentyn Fesiunin² , and Svitlana Andrenko³ 

¹ Department of Law at National Aerospace University “Kharkiv Aviation Institute”,
Kharkiv, Ukraine

n.fedosenko@khai.edu

² Laboratory of Forensic Economics, Forensic Merchandising, Forensic Psychology and
Intellectual Property Analysis of National Scientific Center «Hon. Prof. M. S. Bokarius Forensic
Science Institute», Kharkiv, Ukraine

³ Department of Professional Development at National Scientific Center «Hon. Prof. M. S.
Bokarius Forensic Science Institute», Kharkiv, Ukraine

sweta-a@ukr.net

Abstract. The research subject is to determine the concept, characteristics of contracts as well as relations between them in the field of air carriage. The article is dedicated to the analysis of legal nature and basic components of aviation contracts, as well as specificity of their theoretical and practical application, classification, and as a result is aimed at creating a holistic concept of the system of contract-based regulation of air transportation. This analysis is rooted in the study of the context of civil and scientific literature and forensic practice on the specified issue. Apart from general scientific research methods, interpretation legal methods, formal legal, comparative law methods are implemented. Reference to the provisions of civil law doctrine enabled to introduce an individual view on our research subject and suggest grounds for better understanding and improvement of air legislation. The main conclusion of the performed study is that civil law regulation of contracts in the field of air transportation is characterized by the presence of special contracts with its special characteristics determining the content of air legislation. Concerning each of the contract structures, certain questions arise not only in relation to legal regulation and law enforcement (overbooking in the passenger air carriage contract), but also to scientific approaches to determine the concept and nature of a specific contract (status of an air carriage contract as bilateral and trilateral, legal nature of aircraft charter agreement).

The lack of a single understanding and interpretation of concepts, contradictions in legislation, existence of legal gaps do not contribute to air legislation uniformity and provoke difficulty in its study and application. Obtained results can be used in theoretical and legal researches as well as in legislative and practical activities.

Keywords: Air charter · Aircraft charter agreement · Cargo air carriage · Luggage air carriage · Passenger air carriage · Air carriage contract air legislation · Air carriage · Transportation contracts

1 Introduction

Air (aerial) carriage is a specific field of civil law regulation which role is to provide certain services aimed at moving goods or a person in space. Formation and development of the transport system of Ukraine ensures timely, full and better response to the needs of population and social production in air carriage, creation of comfortable conditions for the development of such activities at transport enterprises of all ownership forms.

Carriage contract is the main category that makes the system of civil law relations while carrying out the transportation process. This air law section keeps evolving and advancing. In turn, as scientists-practitioners believe, our legislative framework lacks practical development of many problems associated with modernization of air transportation, namely peculiarities of regulating certain types of air carriage, ensuring guaranteed execution of air carriage contracts, and their legislative support, including ensuring the protection of rights of air carriage contract chief participant: a passenger or customer of transportation.

Today, air transport takes a leading place in the world in relation to international passenger transportation, which legal regulation keeps constantly developing and advancing. According to the statistics, the popularity of air transport in Ukraine is growing. First of all, it is associated with geographical expansion of air transportation and tourists' aspiration to reduce travel time period to places of recreation. Consequently, the research on the procedure and peculiarities of social relations legal regulation in the field of inland and international air (aerial) carriage of passengers and luggage is relevant.

2 Literature Review

Such domestic and foreign scientists and practitioners as M. Bohuslavskiy, V. Bordunov, V. Butylin, E. V. Horian, K. V. Horian, B. Yeliseiev, V. Kubynskiy, M. Puchkova, P. Rabynovych, O. Stremoukhov, H. Shmelov etc. are among civilian scientists who dedicated their researches and research papers to studying issues of civil law transportation regulation within the regulatory framework of Ukraine and the EU, which governs the mechanism for ensuring passengers' rights according to the air carriage contract.

Innovations concerning the air carriage contract were studied in research papers of such scientists as O. Aksamentov, O. Batalov, O. M. Vereshchahina, N. Vierietielnikova, O. Vyhodiatskyĭ, A. P. Hetman, V. Horobiets, V. Hriaznov, T. Kozlova, Yu. Malieiev, V. Molchanov, V. Mosashvyly, M. Ostroumov, P. Riemishevskyĭ, A. Smirnov, L. Taltseva, I. Khliestova, K. Kholopov, Ye. Yeriashov, N. Mamchenko, O. Nasadiuk, O. Onishchenko, O. Stoliarskyi, O. Chernenko, A. Filippov, H. V. Tsirat, O. Sheremietieva and others.

Despite the increased attention of scientists to this contract, many theoretical and practical issues are still debatable. What is more, the study of an air carriage contract as a civil law document and in foreign sources is also underdeveloped.

3 Presentation of the Main Content

An integral part of a unified transport system, in conformity with the Law of Ukraine: *On transport*, is an aviation transport which, according to Article 32, includes air transport enterprises performing carriage of passengers, cargo, luggage, mail [1].

In national transport legislation, there is a special legal regulation of civil law relations associated with the contract of carriage. In most general sense, transportation is a kind of economic activity aimed at moving cargoes, passengers and their luggage on the basis of the drawn contract between carriers and their customers.

The important fact is that air transportation is carried out, as a rule, privately, based on the principles of parties' free will, freedom of compiling a contract and formulating its conditions, however, given certain security requirements.

In view of the fact that the air carriage contract is a civil law contract, standards of the Civil Code of Ukraine are applicable to it [2].

Legislative regulation of carriage contracts has a certain feature not inherent in other civil law institutions. In particular, apart from the Civil Code of Ukraine, the existence of individual codified acts considering the specifics of transportation by certain types of transport, including the Air Code of Ukraine [3], is stipulated.

The Civil Code of Ukraine is central in the regulation of transportation relations, so all the regulations contained in other legislative and regulatory acts, in particular, regulations and the Civil Code of Ukraine, should comply with it, except for the cases when the Civil Code of Ukraine stipulates the possibility of transportation relations settlement by means of law in another way.

It should be stressed that the Civil Code of Ukraine has a complex nature and contains private law and public-law regulations governing relations regarding control over air transportation by the state.

A civil-law contract for air carriage, as the main means of transportation legal regulation, has a specific nature conditioned by a particular type of transport. To determine the status of a contract, its legal nature should be studied based on the analysis of current legislation regulations.

Thus, according to Article 1, paragraph 78, of the Air Code of Ukraine, air carriage refers to transportation of passengers, luggage, cargo or mail by an aircraft under a corresponding air carriage contract.

According to Article 98 of the Air Code of Ukraine, air transportation is carried out on the basis of a contract concluded between the air carrier and passenger or consignor. Each air carriage contract and its conditions are certified by a contract of carriage issued by an air carrier or authorized organizations (agents) [3].

An air carriage contract is a civil law contract, the provisions of the Civil Code of Ukraine fully apply to it. According to the passenger carriage contract, one party (carrier) undertakes to transport the other party (passenger) to a destination, and in case of luggage hand-in: also to deliver luggage to a destination and return it to a person who has the right to receive luggage. A passenger is obliged to cover the stipulated travel fee, and in case of luggage hand-in: also for its transportation. (Article 910, part 1, of the Civil Code).

Taking into consideration the announced by Ukraine course for integration into the European Union, priority measures to adapt Ukrainian air transport legislation to EU standards [4] should be implemented, in which a single European aviation market is formed in accordance with the Single European Act [5]. The European Common Aviation Area (ECAA) is a bilateral agreement between the EU and third countries on the establishment of general security standards and initiation of market relations in

aviation field. The European Common Aviation Area can use airspace more efficiently and safely. The international organization: The European Organization for the Safety of Air Navigation (EUROCONTROL) is responsible for air transportation and coordination and planning of air traffic control throughout Europe [6].

The corresponding action plan contains many priority directions and provisions of the EU. These provisions need to be translated in Ukrainian, introducing necessary technical terms that are not currently available in Ukrainian legislative framework. At the same time, the plan on preparing for ECAA implementation presupposes the amendment of the current wording of the Air Code of Ukraine: regarding the adoption of aviation rules, certification of aerodromes: on the basis of the Commission regulations (EU) by No. 139/2014 [7]; for operation of aircrafts: Regulations by No. 965/2012 [8]; for civil aviation crews: Regulations by No. 1178/2011) [9].

Preparation process of signing of the European Common Aviation Area agreement continues. For both Ukraine and the European side, the most rapid conclusion of this Agreement is one of the principal common tasks of the present. By signing the ECAA agreement, Ukraine is obliged to align Ukrainian legislation with European standards in the field of aviation safety, air traffic organization and environmental protection. In the future, both the Ukrainian and the European side will have unlimited commercial rights to perform flights within Ukraine and between Ukraine and the EU. This will allow not only to significantly increase competition in the market, but also will contribute to decline in prices for tickets.

The Single European Sky is a European Commission initiative based on which airspace distribution and its management will be integrated for most European countries (European Common Aviation Area) [10].

Furthermore, the procedure for implementation of international passenger transportation in Ukraine is governed by the regulations of Ukrainian national legislation, the provisions of international conventions and regulations [11], to which Ukraine acceded.

Among the basic ones: the Convention for the Unification of Certain Rules for International Carriage adopted on May 28, 1999 (hereinafter referred to as the Montreal Convention) [12, 15]; The Convention for unification of certain rules relating to international air transports dated on October 12, 1929 [13], ratified by the Ukrainian SSR dated on August 14, 1959 by No. 995–181 (hereinafter referred to as the Warsaw Convention dated on 1929); Protocol for amendment to the Convention to unify certain rules relating to international air transportation (The Hague Protocol 1955) [14] and Regulation (EU) 261/20042: *On the establishment of common rules in the area of compensation and assistance to passengers in case of denied boarding, cancellation or prolonged flight delay* [18].

Aviation transportation by Ukrainian air carriers are also governed by air transportation rules and passenger and luggage services (approved by the Order of the State Aviation Administration of Ukraine dated on November 26, 2018, by No. 1239, hereinafter referred to as Air transportation rules) [19], provisions of the Air Code of Ukraine, the Law of Ukraine: *On Consumer Rights Protection* [20], Civil Code of Ukraine and air carrier rules (rules, instructions and technologies established by the carrier used during passengers and/or luggage transportation, including passenger and luggage air

transportation rules, rules for applying tariffs and standards for servicing passengers and luggage, the procedure for considering claims).

At the international level, leading organizations in the field of civil aviation: International Civil Aviation Organization (ICAO) [21] and International Air Transportation Association (IATA) [22] are studying the prospects for governing the air contract law.

In conditions of reforming relations in the system of international aviation, the ICAO draws particular attention to legal regulation. Thus, to implement its conceptual vision for sustainable development of civil aviation, the ICAO defines an individual strategic goal, one of which is legal regulation, namely to strengthen legal provisions for regulating international civil aviation activity [24].

In the scientific literature, transportation contracts include the air carriage contract itself as well as contracts that are closely related to and mediate the process of transportation, including transportation itself. In particular, it concerns obligations on provision of vehicles, company's contracts on transportation organization, chartering, company's contracts while transportation in direct mixed traffic (various types of transport), transport forwarding agreement, etc. The group of contracts associated with air transport activity includes contracts on provision of aviation services and an insurance contract when using air transport.

Accordingly, passenger air carriage contracts relate to civil-law contracts in the field of aviation (air) transportation according to the general rule; luggage air carriage contract, cargo (or mail) carriage contract; aircraft charter agreement (aircraft charter).

Each contract has its own specific features and is individually defined both in Tax Code of Ukraine and the Aviation Rules of Ukraine: *Rules of air carriage and servicing of passengers and luggage* approved by the Order of The State Aviation Administration of Ukraine No. 1239 dated on November 26, 2018 [25].

The legal nature of aviation contracts also relates to the combination of public and private law provisions, which manifests itself in the presence of imperative rules on the order of conclusion, change and termination of a contract, responsibility of a passenger for aviation rules violation, responsibility of the air carrier as the owner of the source of increased danger. At the same time, the air carriage contract is bilateral, bill paying, consensual (carriage of passengers, aircraft charter) or real (carriage of luggage, cargo), public (transportation of passengers).

In accordance with the general rule, an air carriage contract is bill paying, bilateral, mutual, fixed-term, and the subject of an air carriage is services of the air carrier on transporting passengers, luggage or cargo to a destination, as well as counter-payment of services and insurance of contract while air transport use.

Given the above, traditional aviation (air) contracts and other contracts related to transportation and other civil aviation contracts should be emphasized, as well as contracts on the other use of civil aviation.

At first glance, the mentioned characteristics of contract provoke certain difficulties while defining their precise classification. Let's consider in more detail the legal nature and understanding of particular aviation (air) contracts.

Air carriage is implemented under the which general provisions are contained in the provisions of Chapter 64 of the Civil Code of Ukraine. By analyzing provisions contained in Chapter 64 of the Civil Code of Ukraine, it could be concluded that the concept of

carriage contract is disclosed through a series of contracts aimed at governing different relations associated with transportation of goods, passengers and luggage, mail.

The mentioned contracts differ from each other by different features: parties involved, subject matter, etc. A majority of scientists do not consider it to be a legal presumption: air carriage takes place only when it is based on the contract until the opposite is proved [26, C. 54].

This principle is inherent in the old Warsaw Convention of 1929, and the new Montreal Convention of 1999 [13] and proceeds from the fact that parties conclude and implement a carriage contract.

Thus, according to the passenger carriage contract, one party (carrier) undertakes to transport the other party (passenger) to a destination, and in case of luggage hand-in: also to deliver luggage to destination and return it to a person who has the right to receive luggage. A passenger is obliged to cover the stipulated travel fee, and in case of luggage hand-in: also for its carriage. (Article 910, part 1, of the Civil Code of Ukraine).

The air carriage contract stipulates contract obligations belonging to the group of service contracts. That is, provisions of Chapter 63 of the Civil Code of Ukraine: *Services. General provisions*: provisions of this chapter, according to Article 901, part 1, of the Civil Code, may apply to all service contracts, provided it does not contradict the essence of obligation. In addition, Chapter 64 of the Civil Code of Ukraine: *Transportation* is dedicated to special regulation of transportation services.

Reference in legislation to such passengers who are transported on preferential terms or for free does not presuppose the contract free nature. Thus, preferential conditions for carriage of cargo, passengers, luggage, mail could be established by an organization, transport enterprise at its expense or financed from a corresponding budget in cases stipulated by law and other legal regulations.

However, for carriage contracts specified by Chapter 64 of the Civil Code of Ukraine, payment is a constitutive feature that follows directly from legal definitions of certain types of a contract. Thus, according to a carriage contract, “the sender is obliged to pay a set fee for carriage of cargo” (Article 909, part 1, of the Civil Code of Ukraine), according to passenger and luggage carriage contract, “a passenger undertakes to pay an established fee” (Article 909, part 1, of the Civil Code of Ukraine), according to the contract of charter (chartering), “one party (charterer) is obliged to provide the other party (charterer) with transportation services for the established fee (Article 912, part 1, the Civil Code of Ukraine)”.

In addition, a separate article in Chapter 64 of the Civil Code of Ukraine is dedicated to carriage charge. Thus, as stated in Article 916, part 1, transportation fee is charged for carriage of cargo, passengers, luggage, mail determined by the contract between parties, unless otherwise is established by law or other legal regulations.

According to Article 915 of the Civil Code of Ukraine, carriage carried out by a legal entity is considered to be transportation by public transport. The contract of carriage by public transport is a public contract. Accordingly, a passenger air carriage contract is a public contract, since an aviation company since an airline as a commercial organization has no right to refuse a passenger in contract conclusion. The peculiarity of public contracts is that the customer (passenger) does not possess such scope of rights as the air carrier, since it is impossible to formulate contract terms. In fact, he

is deprived of the opportunity to amend terms that would provide him with additional guarantees for implementation of rights belonging to him, their protection and defense. As a matter of fact, the passenger buying a ticket accepts the carrier's offer and agrees to terms and rules of passenger carriage. At the same time, the passenger air carriage contract is a contract of adhesion, since the passenger concludes a contract on conditions determined by the carrier. Terms for concluding a passenger air carriage contract are not only ticket payment by a passenger, but also an obligatory fulfillment of aviation security terms: registration of a passenger, preliminary inspection, and while international air transportation: implementation of the terms of customs and migration control.

Given the above, the air carrier possesses the right as well as obligation to carry out carriage according at the same fare for all consumers (the difference is only in service class) which forbids the unjustified refusal in air carriage contract conclusion and preference of one person over the other. The air carrier is obliged to conclude an air carriage contract with any person who will appeal to him on contract conclusion, but the refusal to sell an aircraft ticket for a passenger is allowed only in the absence of free places and capacities or due to restriction in a particular passenger carriage.

When concluding the air carriage contract, oftentimes problems associated with unilateral refusal of the carrier in passenger's boarding for a flight arise. According to Article 100, part 1, of the Civil Code the air carrier can refuse in transportation of a passenger or consignor in cases stipulated by Ukrainian aviation regulations. At the same time, in practice, other grounds not provided by law also exist. For example, these are the lack of seats on the plane, which is often the result of overselling (overselling of airline tickets: sales and booking by the carrier of a greater number of tickets for a flight than seats provided in a plane), or notify the carrier that a passenger has limited capacity. Overselling in its essence is a one-way refusal of the carrier to fulfill terms of a contract, which is fully complied with provisions of the Civil Code of Ukraine on unilateral refusal to fulfill a contract.

In professional civilized literature, unfortunately, not sufficient attention is paid to the protection of civil rights under the passenger air carriage contract. As a rule, it is only about the responsibility of the carrier for non-fulfillment or improper fulfillment of the terms of passenger air carriage contract. Moreover, the issue regarding the use of civil-law liability in case of voluntary compensations payment is also controversial. Thus, according to I.V. Venedyktova, voluntary payment of certain compensations for infringement of rights relates to civil-law liability. At the same time, as R.B. Shyshka notes, erroneous is understanding of responsibility as any sanctions for an offense with their negative consequences without the procedural order of their use by court. According to his view, contractual liability arises precisely as a result of transformation or overgrowth of the violated contractual obligation into an additional (accessory) obligation. Sanction when implementing it by court makes up the concept of civil-law liability [27, P. 154].

Besides, responsibility of the carrier for non-compliance or inappropriate compliance with the contract terms on a passenger carriage by air transport is stipulated in Air transport regulations. Regulations have been developed taking into account provisions of the Montreal Convention, Warsaw Convention, Hague Protocol. While developing Regulations, provisions of Regulation (EC) 261/2004 applicable within the territory of

the European Union were also taken into account, and are followed by all the airlines registered in the EU or which operate flights from European airports. Also, other air carriers during flights to / or from Europe are also required to comply with its requirements.

The concept of *flight cancellation* does not include Air carriage rules. Given the fact that in accordance with Article 11, part 4, of the Civil Code of Ukraine all definitions shall be interpreted taking into account the legislation of the European Union in the field of civil aviation, it is possible to return to the definition of the concept of *flight cancellation* contained in Regulations (EU) 261, where Article 2, part 1, of the mentioned Regulation specifies cancellation as non-fulfillment of previously planned flight in which at least one place was booked [28].

Regulation 261/2004 stipulates three types of delay: depending on the number of hours of delay: from the scheduled time of departure of flight and flight range. In the event of its origin, the passenger under Regulation 261/2004 has the right to standard assistance measures defined by the Regulation as “the right to care”, which, in particular, is understood as provision of a passenger with food, cool drinks, ability to use communication means, etc. during this delay. Accordingly, regulations on air transportation define only two types of delay, depending on the direction of a passenger transportation: a) in case of a passenger carriage to/from airports of the European Union (Passengers of the EU), the concept of delay is the same as in Regulation 261/2004, that is the carrier is guided by objective criteria; b) in case of delay of flights within Ukraine and of international flights (apart from flights operated from/to airports within the territory of the European Union), where delay is assessed: “in reasonable time regarding the time defined in timetable or a ticket”. The rate on calculation from the time established in a schedule is uncoordinated, since the rules of carriage in any world airline, including Ukrainian, presuppose that the time of departure (arrival) indicated in a ticket, traffic schedule or other published timetables of airline flights, is not guaranteed and is not an obligatory prerequisite for a carriage contract as the timetable is not binding. Thus, it cannot be used as a reference point to understand the concepts of *in time /not in time* [29, p. 462].

Article 7 of the EU Regulation No. 261/2004 also stipulates reimbursement in relevant cases. At the same time, this Directive defines cancellation as “non-fulfillment of a flight that was scheduled for which at least one place was reserved”. In the Regulation, also the time period after which a long delay is considered to be canceled is mentioned. In the European Commission notification addressed to the European Parliament and the EU Council dated on April 4, 2011, it is stated: “It is difficult to determine, detain a flight or cancel it, as a different approach to the classification of these terms is used by airlines, which obviously affect money compensation payment”. Also, data relating to cancellation of flights are provided by airlines, and not by independent sources of information.

Among most important issues in the aviation industry a special place is taken by the control over luggage aviation transportation. Thus, the Ukrainian government pursue many efforts to ensure conformity of national legislation in this field with world standards. As already mentioned above, Ukraine has signed main international contracts regulating a contract on carriage of goods and passengers by aviation transport. The Tax Code of Ukraine defines luggage as subject, property and other personal property

of a passenger transported by the aircraft. There are several kinds of luggage: unregistered luggage, unaccompanied and transfer ones. Unregistered luggage is a passenger's luggage which is placed in the aircraft salon by the agreement of the carrier and under control of a passenger and is certified by a special tag. Luggage is unaccompanied: it is a luggage that is accepted by a carrier for air carriage separately from a passenger and is documented with a cargo waybill. Transferred luggage: registered luggage of a transfer passenger which was accepted for transportation from the point of export to the final destination with overload at transfer point [3].

Transportation of luggage by air is a contractual relationship governed, in particular, by Articles 908 and 910 of the Civil Code of Ukraine, Article 98 of the Air Code. Regarding international legal regulation of air carriage, the Warsaw Convention dated on 1929 has become the basis of it. One of the features of the Warsaw Convention is that it regulates both the contract of the international carriage of goods and the contract of the international carriage of passengers and luggage. In this sense, the Convention is unique in the system of legal regulation of international transportation. International legal regulations which also govern international air carriage are, in particular, the Convention for the Unification of Certain Rules for International Carriage by Air [13] and The Hague Protocol dated on 1955.

The subject of air carriage contract of luggage is transportation service, maintenance and dispensing of luggage to a passenger and payment for this service. In terms of its characteristics, this contract is real, paid and bilateral.

Let's note that in the scientific community there is a discussion about the subject of the ratio between the passenger carriage contract and the luggage carriage contract: some authors single them out as separate contracts, others consider them a single contract, and others believe that the contract of luggage carriage is additional to the passenger carriage contract.

In addition, we believe that different types of luggage should be governed by different types of contracts: if the luggage is registered, it is governed by the luggage carriage contract; and in case the luggage is unregistered (hand luggage, passenger's personal belongings), it is the subject of the passenger carriage contract regulation.

There exists a generally accepted and grounded approach as to accessory nature of luggage delivery pledge, and the luggage carriage contract itself is also of an auxiliary, supplementary, optional nature. However, transportation of luggage, despite its supporting nature, has special legal regulation (the presence of a separate luggage ticket, which is issued and attached to a ticket for a passenger carriage, the same route of a passenger and luggage carriage, the existence of a particular civil-law liability of the carrier for damage, loss and delay of luggage).

Thus, the following view is considered to be right: the luggage air-carriage contract is of an accessory nature since this contract is closely interlinked with the passenger air-carriage contract (which is indirectly confirmed by the legislator due to the lack of independent definition and instructions for this Contract in Article 98 of the Tax Code of Ukraine on passenger air-carriage contract, and Article 910 of the Civil Code of Ukraine on a passenger and luggage carriage contract). Although, nevertheless the luggage air-carriage contract has certain individual features which are mentioned in the legislation,

certain measures of civil-law liability, independent transport document (luggage ticket) of a real nature of the contract.

Paragraph 78 of the Tax Code of Ukraine provides definition for air carriage as well as for carriage of passengers and luggage, including carriage of cargo or mail carried out by an aircraft according to a corresponding air carriage contract. In the Commercial Code of Ukraine, the term: *economic luggage carriage contract* is used, however, there is no definition for cargo air-carriage contract. However, the definition for the concept of *cargo air-carriage contract* is not provided. The Civil Code of Ukraine contains only a general definition of cargo carriage contract. Thus, according to Article 909 of the Civil Code, one party (carrier) is obliged to deliver cargo to the second party (sender) to a destination and hand it over to a person who possesses the right to receive cargo (recipient), and the sender undertakes to pay the established fee for cargo carriage.

The lack of a legislative framework for the cargo air-carriage contract repeatedly attracted attention of scientists. Thus, based on the findings of I.O. Bezliudko, cargo air-carriage contract is a contract on the basis of which one party (air carrier) is obliged to deliver by air cargo entrusted to him by other party (consignor or customer) to the destination airport within agreed terms in a contract, and hand it to a person who is eligible for cargo (recipient) receipt, and the customer undertakes to pay the cargo set fee for cargo carriage [30].

Such interpretation of a cargo air-carriage contract helps to identify significant terms of the contract, to establish subjective matter and its content.

Thus, it can be assumed that essential terms of a cargo air-carriage contract may be the following: terms on the subject, carriage time period and price. The subject is services of delivery of material assets (cargo, luggage, mail) (Article 909, part 1, of the Civil Code of Ukraine) entrusted to the carrier. At the same time, the positive effect of such a service is in movement (carriage) of material assets and in provision of services associated with carriage, which include the following: movement of cargo and luggage without losses, loading, unloading, temporary storage of cargo, delivering cargo to the recipient and its exporting, etc.

In accordance with the Tax Code, entities of cargo air-carriage are: aviation carrier (air carrier) and airport (aerodrome) user.

A broader list of entities of these relations is provided in the Law of Ukraine: *On Approval of the Rules for Cargo Air Carriage* [31], namely agent; consignor; consignee; cargo owner (or trustee).

Cargo air-carriage contracts can be both consensual and real, though the legislator does not directly tackle this issue. However, if the provision of Article 909, part 1, of the Civil Code of Ukraine specifying that the carrier is obliged to deliver cargo “entrusted” to him by the second party (sender) to the destination is understood as an obligation and only takes place after cargo delivery, then the conclusion may be drawn on the establishment of a legislative presumption as to reality of cargo carriage contract.

Cargo air-carriage contracts can be both paid and free. Payment for a contract depends on the following type of a contract: service contract. Paragraph 6.2, Sect. 6, of the Rules of Cargo Air Carriage, which indicates that “the carrier may issue an air waybill by a consignor’s declaration and charge a corresponding fee for this from the consignor”. It

is not a public contract, taking into account that cargo carriage is not a public transport, and the carrier has the right to independently choose with whom to conclude a contract.

There is a discussion about a three-sided nature of a cargo air-carriage contract in science. Proponents of the position on the bilateral nature of cargo air carriage support it with the fact that the consignee is not a full contracting party of cargo carriage, considering that he does not agree the terms of the contract and does not conclude a carriage contract, does not express his willingness and consent to conclude a contract. Also, this contract is not a contract in favor of the third party, as on the grounds of general principles of civil law it is unacceptable to impose the duty on the third person if he does not participate in an obligation (Article 636 of the Civil Code). Foreign researchers [32] adhere to a similar legal position, in particular, in the law of Switzerland [33] and the law of France (Article 1165 of the Civil Code of France) [34, 35].

The carrier has the right to independently choose with whom to conclude a contract. The subject of cargo air-carriage contract (mail) is a service for transportation, maintenance and delivery of cargo (mail) to the consignee, as well as paying fee for this service.

Proponents of the view on the bilateral nature of cargo air-carriage refer to the presence of third independent parties: consignors, carrier and consignee who become contract parties from the moment of submitting a claim by the third-party beneficiary, and therefore a cargo air-carriage contract is fully considered a contract in favor of the third party. An example of a bilateral nature of a carriage contract is recognized when the consignor and the consignee act as one person.

In the context of air carriage, the above-mentioned views should be taken into account and complement each other. We believe that the criterion for distinguishing and, accordingly appropriateness of inclusion of the third party (consignee) to the contract is the nature of activities performed by him, such as economic or foreign economic activities. It is believed that the cargo air-carriage contract becomes a contract in favor of the third person only when the consignor indicates another person as a consignee in a cargo waybill.

If the sender is indicated as a recipient in the registered cargo waybill, then there is no third party in the legal relationship and a contract is bilateral. The concept of a tripartite cargo air-carriage contract is more acceptable since it considers the existence of a consignee and his role in the right to require the delivery of cargo.

Regarding a mail air-carriage contract, we consider it to be a type of contract on cargo carriage with a special entity: communication organization of both a consignor and a consignee, and a special object: mail cargo and mail dispatches with specific labeling.

Aircraft charter agreement (aircraft charter) governing conditions of irregular air traffic is particularly noteworthy. Aircraft charter agreement establishes special conditions for organizing carriage with provision by a charterer of one or more aircrafts, including all or some parts of the aircraft capacity for one or more flights for transportation of passengers, luggage, cargo or mail.

Article 912, part 1, of the Civil Code provides a general definition for an aircraft charter agreement (aircraft charter). Thus, according to the aircraft charter agreement, one party (charter) at extra fee is obliged to provide the other party (charter) with the capacity or some of its part in one or more vehicles for one or more flights to transport

goods, passengers, luggage, mail or for any other purpose, in case it does not contradict the law and other legal regulations [2].

According to Article 1 of the Air Code of Ukraine, aircraft charter carriage is an irregular air transportation, carried out according to an aircraft charter agreement (chartering), by which the air carrier at extra fee provides a charter or charters with a certain number of seats or all aircraft capacity for one or more flights to transport passengers, luggage, cargo or mail indicated by the charterer.

According to Article 61 of the Air Code of Ukraine and in compliance with aircraft charter agreement (aircraft charter) one party (charterer) at extra fee undertakes to provide the other party (charterer) with the entire capacity of one or more aircrafts for one or more flights to transport passengers, luggage, cargo and mail or for other purposes if it does not contradict the current Ukrainian legislation [3].

Based on its characteristics, the aircraft charter agreement (aircraft charter) is consensual, paid, bilateral. It should be stressed that since charter flights are non-scheduled, they are not public transport, and accordingly the air charter agreement is not public.

Despite the fact that both cargo and passenger air carriage contracts can be implemented on the grounds of an air charter agreement, it should be emphasized that a certain number of passenger charter transportation by air is much higher compared to the number of cargo carriage.

Cargo charters are used in cases when the demand for transportation cannot be met by regular flights (transportation of vegetables, fruits, flowers, chemicals, etc.). The development of passenger charters is conditioned by the development of tourism and the emergence of air transport users, for whom transportation cost is significant.

In conformity with an air charter agreement an aircraft may be chartered both for the charterer's own needs (individual charter agreement) and for carriage of other persons (group charter agreement).

For charter carriage, the charterer can charter the aircraft capacity fully or partially. In the latter case, a contract is called a "block charter", because only a block of seats is chartered according to this contract.

The air carriers act as charterers, that is any legal or natural persons who perform air transportation, possess the rights of an aircraft operator (Article 59, part 1, the Air Code of Ukraine). In compliance with this contract, legal entities who don't have their own aircraft park act as charterers, their main activity is not directly aimed at providing transport services, but is associated with the necessity to use vehicles. We refer to travel agencies, sports, professional clubs, etc.

Services for provision of an aircraft capacity and transportation are the subject matter of the aircraft charter agreement. The content of an air charter agreement comprises of the rights and obligations of its parties. The rules for charter flights performance are enshrined by the Order of the Ministry of Transport of Ukraine No. 297 dated on 18.05.2001 [36].

In the English language, the *charter* term is interpreted as rental (loan) [37] of an aircraft or a special-purpose vehicle. In the American Black's Law Dictionary, the *charter* term denotes: "rental or loan of the aircraft to perform a flight", and the air charter agreement ("charter-party") is interpreted as: "a contract by which an aircraft or some of its main part is transferred to a business entity to transport goods by a certain

flight to one or several places, “a special and direct contract, on the basis of which the owner transfers an aircraft or some of its part to another person for a certain time or for use”, “the charter agreement may be an aircraft rental contract or a special service provided by the aircraft owner. If the aircraft owner is obliged to carry cargo that should be provided by a charterer according to the established flight, the contract is simply the aircraft charter agreement [38].

Synonymous in the German Language: *fracht* is understood as cargo or cargo carriage [39]. In the German Law Dictionary edited by Kobler H., the term: *fracht* denotes fee for goods transportation, and the air charter agreement is referred to as an agreement aimed at transporting goods for a fee and is considered to be a subtype of the service contract [40].

In the legal doctrine, one of the issues provoking arguments is the problem of legal nature of the aircraft charter which has a complex nature. It’s no accident that in the authors’ view, the aircraft charter agreement is equivalent to a rental agreement [41], O. D. Keilin expresses the opposite view on the fact that economic content of the aircraft charter agreement for a particular time period, and accordingly its legal authority remain the same, as well as the agreement concluded in case of cargo carriage is not a rental agreement [43].

According to other authors, the aircraft charter agreement is deemed to be one type of carriage contract [44, p. 93]. In the legal doctrine of the number of European countries, the air charter, in this particular case, should be viewed as a type of rental agreement, and in the other case: a type of carriage contract [45, p. 262].

We should agree with the above-mentioned views that it is expedient to attribute individual charter agreements (chartering) by their legal nature to rental agreements (loan), however the purpose of the agreement, namely transportation of cargo from one place to another, plays an important role, since the sender purpose is not to obtain the entire or part of the aircraft capacity, but cargo carriage to a specified place.

Summarizing the above, it is expedient to accept the fact that optimal approach to the legal nature of the charter (chartering) is that the charter agreement (chartering) is a mixed civil-law contract as it includes elements of different types of contracts, depending on the purpose and leased aircraft volume.

4 Conclusions

In conclusion, it should be emphasized that the air carriage contract (by air transport) is a bilateral agreement on services provision, in which one of the parties is the air carrier, and another: the passenger or sender. A studied agreement may be both real and consensual, formal, paid and public agreement.

Civil law regulation of air carriage is characterized by the existence of independent contracts with their own features and characteristics determining the content of air legislation.

The provided analysis of contracts is only a part of the civil law aspect of air legislation and does not reflect all problematic aspects in the field of air transportation, since there is still a huge number of understudied and unresolved issues in this area.

Given the current difficult economic and epidemiological situation in Ukraine and in the world, further adaptation and development of the aviation field requires analysis and reconsideration of existing contractual structures and regulations of air law to reactivate air transportation activity, as well as involvement of unmanned aerial vehicles in its work. The last of the mentioned aspects has not been studied extensively in the legal literature and may be subject of further researches.

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