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INTERNATIONAL REVIEW

THE AIR CODE OF THE U.S.S.R.*

BY DENIS A. COOPERT†

I. INTRODUCTION

ON January 1, 1962, the new Air Code of the U.S.S.R. (*Vozdushnii Kodeks Soiuza SSR*), which replaces the earlier 1935 Code, entered into effect. It consists of 145 sections and an appendix, which details the flag and emblem of the civil airfleet of the U.S.S.R.

The Code is divided into ten (10) chapters:

- I. General Principles (Sections 1-8);
- II. Aircraft (Sections 9-17);
- III. Aircraft Crew (Sections 18-26);
- IV. Airdromes and Airports (Sections 27-43);
- V. Flights Within U.S.S.R. Airspace (Sections 44-69);
- VI. International Flights (Sections 70-80);
- VII. Air Transportation of Passengers, Baggage, Cargo and Mail (Sections 81-119);
- VIII. International Transportation of Passengers, Baggage and Cargo (Sections 120-136);
- IX. Utilization of Civil Aviation and Civil Aeronautics in Various Branches of the National Economy (Sections 137-140); and
- X. Penalties Imposed Administratively by the General Administration of the Civil Airfleet¹ Attached to the Council of Ministers of the U.S.S.R.² (Sections 141-145).

Of the above ten chapters, two (VI and VIII) are devoted to problems of international flights and air transportation. These have special significance for the interested American reader, because the United States and the Soviet Union have reached basic agreement relating to direct passenger and cargo air service between New York and Moscow³ and, for the time being, these chapters provide the only source of Soviet law on the subject since no published implementing regulations are available to the Western World. Repeated requests by this author to the Soviet authorities to make the undoubtedly existing pertinent regulations available, accompanied by

* This article is based on the author's soon forthcoming book on the subject, to be published by the Michie Company, Law Book Publishers, Charlottesville, Virginia.

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¹ *Glavnoe Upravlenie Grazhdanskogo Vozdushnogo Flota*. The functions and powers of this government agency resemble those of the United States Civil Aeronautics Board and of the Federal Aviation Agency, combined. Recently, however, there has been created a Ministry of the Civil Air Fleet (MGVF), hitherto nonexistent. The extent of its function and relationship to the Central Administration of the Civil Air Fleet are as yet unknown.

² *Soviet Ministrov SSSR*.

³ The author of this paper participated in the preparatory stages of this agreement as an Attorney-Advisor, on detail from the United States Air Force (The Judge Advocate General's Department) to the Federal Aviation Agency.

an explanation that they are needed for publication of the author's forthcoming book on the subject, remain unanswered.

II. FLIGHTS WITHIN U.S.S.R. AIRSPACE

The Soviet Air Code applies to all civil and commercial transportation,⁴ which is, in accordance with the prevailing state concept, a governmental function, as is railroad and maritime transportation. Hence, domestic public air transportation is a Soviet government monopoly, the government being the sole air carrier. International air transportation, on the other hand, may be undertaken by foreign carriers⁵ under authority granted by the Central Administration of the Civil Airfleet attached to the Council of Ministers of the U.S.S.R., pursuant to an appropriate international agreement.⁶ In the absence of such an agreement, overflight of Soviet territory by foreign aircraft is prohibited, unless special authorization therefor is obtained in advance. This rule applies equally to unmanned foreign aircraft whose owners are required to provide the appropriate U.S.S.R. authorities with the means to control the flight of such aircraft within the U.S.S.R. airspace.⁷ Because the Air Code governs all civil and commercial air transportation, Soviet civil and commercial aircraft are governed by the Code even when abroad, unless otherwise provided by the laws of the host country.

Within U.S.S.R. airspace scheduled aircraft flights must be performed on established routes.⁸ Non-scheduled flights must follow a route specifically prescribed by the respective flight authorization. To assure that the traffic control authorities may always be informed of an aircraft's flight position, aircraft in flight must maintain constant radio communication with the appropriate traffic control service. When the gravity of a situation demands an instant decision to deviate from the route specified in the flight plan, the aircraft commander must immediately notify the traffic control authority of the decision thus made.⁹ If communication is at any time interrupted, the aircraft commander and the traffic control service must take all appropriate measures for its resumption. However, where this is impossible, the commander must land at the nearest airdrome and inform the traffic control service of the aircraft's position.¹⁰ Violation of this, or of other flight rules, renders the aircraft "delinquent"; and, as such, it may be forced to land. Upon landing and clarification of the reason for violation of this rule, the aircraft may resume its flight only upon authorization issued by the Central Administration of the Civil Airfleet.¹¹ This, of course, may engender considerable delay of the aircraft.

III. AIRCRAFT

The Code contains no definition of the term "aircraft." It defines,

⁴ Air Code, Section 3. All herein referred to provisions of the Soviet Air Code are contained in the author's translation beginning at page 30 *infra*.

⁵ Air Code, Section 81.

⁶ The U.S.S.R. has bilateral aviation agreements with thirty-one countries.

⁷ Air Code, Section 76. A definition of the term "airspace" is contained in Section 1.

⁸ Air Code, Section 45.

⁹ Air Code, Section 52.

¹⁰ Air Code, Section 59.

¹¹ Air Code, Section 62.

however, the term "civil aircraft" by considering as such any aerial contrivance other than those operated by the armed forces.¹²

Civil aircraft require registration in the State Register of Civil Aircraft of the U.S.S.R. It is to be noted in this connection that the Soviet Air Code has adopted the principle of preference of Soviet registration. Such registration automatically invalidates any prior foreign registration, at least insofar as Soviet law is concerned. If, however, an aircraft registered in the U.S.S.R. is subsequently registered abroad, the foreign registration will not be recognized by the Soviet Union unless preceded by cancellation of the U.S.S.R. registration.¹³ Soviet registered aircraft may be expunged from the State Register in case of: (1) withdrawal from operation; (2) destruction; (3) disappearance, if the search has been abandoned; and (4) sale or transfer, in accordance with established procedure, to a foreign state, foreign entities or aliens.¹⁴

No civil aircraft may be operated without an airworthiness certificate. Authority to prescribe the procedure for issuance thereof, and for periodic reinspection of aircraft airworthiness, rests in the Central Administration of the Civil Airfleet.¹⁵ All aircraft, Soviet as well as foreign, are required to carry aboard certain documents, such as the certificates of registration and airworthiness, and a log book.¹⁶ There is, of course, also a requirement for the display of identification marks on civil aircraft.¹⁷

IV. AIRCRAFT CREWS

Soviet citizenship is required for crew members manning Soviet civil aircraft, but exceptions to this rule may be made in accordance with a procedure established by the Council of Ministers of the U.S.S.R.¹⁸ The Air Code provides for training, rating and licensing of aircraft operating personnel;¹⁹ and takeoff clearance includes inspection as to availability of a complete and properly licensed crew.²⁰ Although the Code contains no provision regarding licensing or recognition of licenses of crew members of foreign aircraft, a sampling of a number of bilateral international aviation agreements, entered into between the U.S.S.R. and various countries, shows that this matter is covered therein on the basis of reciprocity.

V. THE AIRCRAFT COMMANDER

The Soviet Air Code establishes the concept of the aircraft "commander,"²¹ a feature not found in the United States Federal Aviation Act. In Soviet law he is regarded as the agent of the aircraft and/or cargo owner; as such, he has authority to do anything which the aircraft and/or cargo may require under emergency conditions,²² and, he must use every

¹² Air Code, Section 9. In the United States, the term signifies aircraft other than "public" aircraft.

¹³ Air Code, Section 11.

¹⁴ Air Code, Section 12.

¹⁵ Air Code, Section 14.

¹⁶ Air Code, Section 15.

¹⁷ Air Code, Section 13.

¹⁸ Air Code, Section 19.

¹⁹ Air Code, Section 18, 20.

²⁰ Air Code, Section 18, 51(3).

²¹ Air-Code, Section 18.

²² Air Code Section 24.

means in his power to safeguard life and limb of both passengers and crew as well as any property aboard.²³ In case of distress of the aircraft, no crew member is authorized to abandon it without the express permission of the aircraft commander, who is the last to abandon.²⁴ The commander is also required to render assistance to other aircraft as well as to river and ocean-going vessels in distress, including their passengers and crews, provided that he can do so without endangering his own aircraft, passengers or crew.²⁵ In order to enable him to effectively discharge his duties, the law provides that his orders must be unquestioningly obeyed by all persons aboard. In case of failure to obey, or of other actions by passengers or crew endangering flight safety, he is required and empowered to use any means deemed necessary to meet the situation.²⁶

VI. PASSENGER AIR TRANSPORTATION

The Air Code provides that civil aircraft may carry passengers, baggage, mail and cargo.²⁷ As a general rule the issuance of a passenger ticket evidences an air transportation contract between the carrier and passenger.²⁸ Consequently, neither passenger nor air carrier has the right to refuse to perform under the contract, except that a passenger may cancel his flight and be reimbursed for the paid fare in the event of: (1) illness certified by a medical institution; (2) delayed departure of the aircraft at the point of flight origin or substitution of the aircraft with a different type of craft; (3) return of the aircraft to the point of origin without completion of the flight; and (4) passenger notice to the carrier of cancellation of the flight before expiration of the time limit established by the transportation regulations. In the event the flight cancellation by a passenger takes place later than the time limit prescribed by the regulations, the passenger is entitled to a refund of the transportation fare, minus an established fee. The amount of the fee may not exceed twenty-five per cent of the tariff rate for one-way transportation.

A passenger is entitled to refuse continuation of a flight and to demand refund of an appropriate part of the paid fare, if the carrier interrupts the flight for any reason or if the departure of the aircraft from an intermediate landing airport does not take place on schedule, as well as in the event of the passenger's illness.²⁹

Passenger transportation may also engender tort liability on the part of the carrier founded on a principle, universally recognized in the Soviet Union, which, in essence, establishes that he who causes damage to the person or property of another is obligated to make compensation therefor.³⁰ However, as regards certain types of compensation, such as that for mental anguish, pain and suffering (*injuria absque damno*), Soviet law differs radically from United States law in that compensation therefor may not be awarded at all. Nor may damages be awarded for bodily injury to or

²³ Air Code, Section 22.

²⁴ Air Code Section 24.

²⁵ Air Code, Section 26.

²⁶ Air Code, Section 24.

²⁷ Air Code, Sections 4, 27.

²⁸ Air Code, Section 84.

²⁹ Air Code, Section 88.

³⁰ Fundamentals of Civil Legislation of the U.S.S.R. and Union Republics, December 8, 1961 (hereinafter referred to as Civil Fundamentals), Article 88. (All herein referred to provisions of the Civil Fundamentals are contained in Appendix "A" to this article.)

death of persons, unless accompanied by financial loss. Where the victim is eligible for social insurance or other similar benefits, compensation is not payable except to the extent that the financial loss exceeds the social insurance benefits.³¹ Hence, in cases of bodily injury or death, compensation is payable only for damage actually suffered, and may be payable in the form of an annuity or in a lump sum. Thus, where the defendant is an alien, e.g., a foreign air carrier, the total amount adjudicated may be ordered paid by it into the social insurance fund for disbursement to the successful plaintiff in the form of an annuity.

Passengers are also subject to compulsory trip insurance,³² for which the premium is added to the fare. Naturally, where the insurer is called upon to make payment to an individual as a result of an insured contingency, it acquires the right to claim reimbursement from the air carrier to the extent that the latter is legally liable for the contingency.

Injury to another, however, does not always constitute a basis for an all-inclusive tort claim against a tortfeasor. Thus, where the damage was caused through the fault³³ of both or several parties, liability of each is determined in proportion to the degree of fault. In other words, the Air Code, just like Soviet law in general, has adopted the principle that contributory negligence is not a bar to recovery, but is merely a factor to be weighed in determining the extent of the defendant's liability. In the event that it is impossible to determine the degree of fault of each party, liability is apportioned among them equally.

General Soviet law also relieves a person of financial liability where it is shown that the damage could not have been avoided or that the damage occurred in consequence of a wilful act or gross negligence of the victim itself.³⁴ The Air Code lumps all these exceptions under the category of "absence of fault" and decrees that absent any fault of the parties in the causation of the damage, neither of them has a right to claim compensatory relief.³⁵ It is to be noted in this connection that in domestic passenger air transportation the hazard of an insuperable force (*nepreodolimaia sila*) is borne by the carrier.³⁶

As regards international air transportation, the Soviet Union is a signatory of the Warsaw Convention of 1929 which provides for uniformity of legal rights in international travel and, to this extent makes domestic law inapplicable.³⁷ In both instances, domestic as well as international passenger travel, the air carrier's liability under the Air Code covers only persons transported for hire. Section 101 of the Code is specific in this regard by saying: "The carrier is subject to financial liability . . . for death, personal injury or other injury to health caused to a *passenger*. . . ." The protection of the Code does not extend to the aircraft crew, who are provided for by the Civil Fundamentals.³⁸

³¹ Civil Fundamentals, Article 92.

³² Air Code, Section 118.

³³ "Fault" in Soviet law means either "intent" or "negligence." See Civil Fundamentals, Article 37.

³⁴ Civil Fundamentals, Article 93.

³⁵ Air Code, Section 68.

³⁶ Air Code, Section 101. Although Soviet jurisprudence defines the term "insuperable force" as limited to natural forces only, an event is, in the view of some, not an insuperable force if it can be prevented, although it could not have been prevented by the defendant.

³⁷ Air Code, Sections 120, 130.

³⁸ Civil Fundamentals, Article 91.

VII. CARGO AIR TRANSPORTATION

As a general rule the issuance of an air waybill evidences a cargo air transportation contract between the carrier on the one hand, and the consignor on the other.³⁹ The Code prescribes a penalty for breach of a cargo air transportation agreement by providing that failure to make available the planned transportation facilities, or to present the cargo for reserved air shipment, subjects the carrier or consignor, as the case may be, to a penalty amounting to twenty-five per cent of the shipping cost of the cargo not shipped or transported.⁴⁰ However, here, as in the case of tort liability, fault is a factor in determining liability. That is, the parties will be relieved of liability if the breach of contract occurs as a result of events beyond their control, adverse meteorological flying conditions included.⁴¹

Besides liability incurred for non-shipment of cargo after reservation of space, a consignor may be liable also for damage resulting from incorrectness, inaccuracy, or incomplete information supplied by him when preparing the air waybill which accompanies the cargo on its entire route.⁴²

A cargo air carrier is, of course, liable for the cargo entrusted to him, except where the loss or diminution thereof may be ascribed to the consignor's action or inaction, or to natural causes.⁴³ The extent of the air carrier's liability is precisely circumscribed by the Code which also covers damages for delay in the cargo delivery.⁴⁴ Conversely, consignors and consignees are held accountable for any damage caused by them directly to the cargo air carrier, as well as to others when the carrier is obligated to compensate.⁴⁵

VIII. CLAIMS

Compensation claims for personal injury may be presented only by the injured passenger and, in case of death, those persons who, pursuant to the general principles of Soviet law, are entitled to be compensated for the damages suffered,⁴⁶ *i.e.*, those who were dependent upon the deceased for their support. Therefore, assignment of claims for personal injury or death is not permissible.⁴⁷ As regards compensation for damage to or loss of property transported, the Air Code differentiates between total and partial loss; requires different kinds of documentation for each such loss;⁴⁸ and provides for differing methods of calculation for the beginning of the running of the statute of limitations.⁴⁹ No suit, however, may be brought against the air carrier unless the prescribed administrative claims procedure shall have been fully exhausted.⁵⁰

³⁹ Air Code, Section 84.

⁴⁰ Air Code, Section 92.

⁴¹ Air Code, Section 93.

⁴² Air Code, Sections 84, 94, 124, 126.

⁴³ Air Code, Sections 102-04, 128.

⁴⁴ Air Code, Sections 105-06, 128, 131-32.

⁴⁵ Air Code, Section 109.

⁴⁶ Air Code, Section 111.

⁴⁷ Air Code, Section 114.

⁴⁸ Air Code, Section 113.

⁴⁹ Air Code, Sections 115, 135.

⁵⁰ Air Code, Section 112.

FUNDAMENTALS OF CIVIL LEGISLATION OF THE U.S.S.R. AND UNION REPUBLICS

APPENDIX A

ARTICLE 37

FAULT AS THE CONDITION OF LIABILITY FOR BREACH OF OBLIGATION

A person who fails to perform an obligation or performs it improperly incurs material liability for damages (Article 36 of the present Fundamentals) only in the presence of fault (intent or negligence), except in cases provided by law or contract. Absence of fault shall be proved by the person violating the obligation.

Where non-performance or improper performance of an obligation occurs by the fault of both parties, the court, or arbitration or mediation board shall reduce the amount of the debtor's liability accordingly.

ARTICLE 88

GENERAL GROUNDS FOR LIABILITY FOR INJURY CAUSED TO ANOTHER

Injury caused to the person or property of a citizen, and also injury caused to an organization, shall be subject to indemnification in full by the person causing the injury.

The person causing the injury shall be absolved from indemnification if he proves that the injury was not caused by his fault.

An organization shall repair the injury caused by the fault of its functionaries in the performance of their labor (official) duties.

Injury caused by lawful acts shall be subject to indemnification only in cases provided by law.

ARTICLE 91

LIABILITY FOR DEATH OR INJURY TO HEALTH OF PERSON FOR WHOM THE PERSON CAUSING THE INJURY IS BOUND TO PAY INSURANCE PREMIUM

Where a worker, in the performance of his labor (official) duties, has been crippled or has suffered any other injury to health by the fault of an organization or citizen bound to pay premium for him under state social insurance, such organization or citizen must make reparation to the injured person for the injury in the amount over and above the allowance he receives or the pension which was awarded to him after the injury caused to his health and which he actually receives. Exemptions from this rule may be established by the legislation of the U.S.S.R.

In the event of the death of the injured person, the right to receive reparation for the injury shall belong to persons who are unable to earn and who had been the deceased person's dependents, or who at the time of his death were entitled to receive maintenance from him, and also the posthumous child of the deceased.

ARTICLE 92

LIABILITY FOR DEATH OR INJURY TO HEALTH OF PERSON FOR WHOM
THE PERSON CAUSING THE INJURY IS NOT BOUND
TO PAY INSURANCE PREMIUM

Where crippling or any other injury to health has been caused by an organization or citizen not bound to pay a premium for the injured person under state social insurance, such organization or citizen must make reparation to the injured person for the injury caused, in accordance with the rules of Articles 88 and 90 of the present Fundamentals in the amount over and above the allowance he receives or the pension which was awarded to him after the injury caused to his health and which he actually receives.

In the event of the death of the injured person, the right to receive reparation for the injury shall belong to the persons listed in clause two of Article 91 of the present Fundamentals.

ARTICLE 93

THE FAULT OF THE INJURED PERSON AND THE PROPERTY STATUS OF THE
PARTY CAUSING THE INJURY

Where gross negligence on the part of the person injured has contributed to the occurrence of, or increased in, the injury, the amount of compensation, depending on the degree of fault of the injured person (and where the person causing the injury is at fault, depending on the degree of his fault), must be reduced or reparation of injury must be denied altogether.

The court may reduce the amount of compensation for injury caused by a citizen depending on his property status.