

**POSSIBLE EXONERATION OF AIRPORT FROM LIABILITY
FOR BIRD STRIKE DAMAGE**

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A B S T R A C T

Liability of air traffic participants in case of bird strike is very complex matter from different aspects. This kind of liability varies from case to case. From human aspect, in the extreme situation, bird strike accident may cause higher degree consequences i.e. injuries or death of persons (passengers, crew members or, in case of the hardest accidents, third persons on the ground). From financial point of view, there are different direct and indirect costs, profit losses and goodwill loss. Therefore, these circumstances may have great and very significant influence on further market position of air traffic participants, and especially on future reliance of their users.

On one side, the first party who may suffer significant material damage in case of bird strike is aircraft operator. Therefore, an owner of aircraft, or an aircraft operator, is entitled to demand reparation for caused damage in out of court negotiation process or by legal proceedings.

On the other side, the first party to which damage compensation claim will be put is airport operator. During above mentioned processes, a liability of air traffic participant may be established. However, an airport operator has on its disposal a broad spectrum of different possibilities to escape liability, or at least a part of it. This paper tries to explain how to do that.

Key words: defendant, exoneration, legal proceeding, liability, plaintiff.

1. INTRODUCTION

All airports may be divided into several groups: big and small airports, international and local airports, airports open for public traffic or for private use, and civil and military airports. In focus of our interest are big airports open to public use, operated either by State, by public State licensed entity or by private State licensed company. Without regard to a fact who owns airports or who manages them, the prime customer of these airports is civil aviation, i.e. its aircrafts that use them for take-off, landing and parking. Therefore, the main duty of an airport may be defined as creation of development plans and proper maintenance of aircrafts take-off, landing and parking facilities, as well as of passengers, baggage and cargo handling facilities. Furthermore, its duty is to exercise reasonable care in procuring safety for all persons and goods legitimately present on the airport premises.

In course of performing of above mentioned activities, airport operator may cause to other party, airport user, certain damage. Also, airport user may suffer substantial damage within or, in some cases, in the vicinity of airport areas. Because of that, and taking into consideration the wide scope of airport operator activities, it is clear that its potential liability will vary in accordance with activity concerned.

Generally, in legal theory, *liability for damage* is defined as obligatory – legal relation in which one side is liable to repair damage caused to other side, and the other side is entitled to demand such reparation.

There are different criteria for damage liability classification such as:

- Contractual and non-contractual liability;
- Subjective and objective liability;
- Proper liability and liability for others.

One of the most important duties of each airport is maintenance and permanent improvement of air traffic safety. Very serious threat to air traffic safety is bird strike. Namely, a bird strike menace to aviation is universal. It has no respect for airspace boundaries, airport location, phase of flight, aircraft type, season of the year or aircrew experience. Bird strike often causes direct aircraft damage, whereas, in certain cases, it may cause higher degree consequences (total destruction of aircraft, injuries or death of passengers, crewmembers or third persons on the ground, different indirect and hidden damages to aircraft operator, etc.). Therefore, in search for increased safety in the air and on the ground, airport operators in particular, and together with aircraft operators, ATC providers, aircraft manufactures and equipment and engine manufacturers, make significant efforts in attempt to eliminate these strikes. If, in spite of all efforts, a bird strike occurs, an airport operator has a great chance to be the first considered liable for occurred damage. In that context, all air traffic participants, particularly airport and aircraft operators and their insurers, may face the seriousness of different compensation claims regarding property damage, profit loss and eventual injuries or death of persons.

2. LEGAL CASES

Analysing finished court proceedings related to wildlife or bird strike consequences instituted in various countries with different legal systems, we may see from table that in 55% of cases the final court decisions are in favour of plaintiffs, and in 35% they are in favour of defendants. This is evident proof of existence of numerous omissions from the side of defendants, especially airport operators and other state entities.

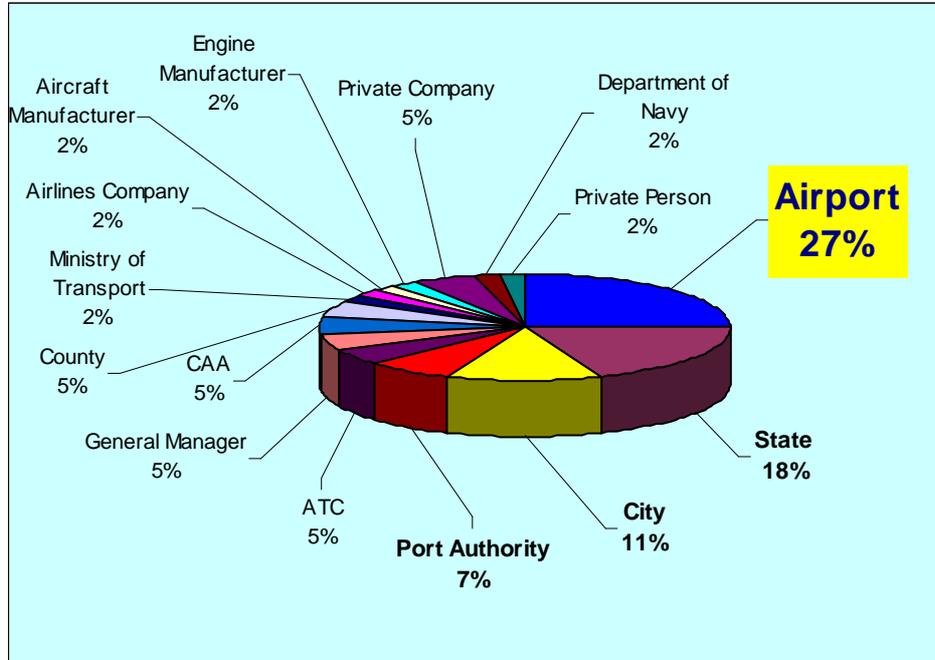
On the other side, court decisions in favour of defendants very clearly show the importance of competent and responsible attitude of airport operators, other bodies and persons participating in activities that eliminate bird hazard.

Country	In favour of plaintiff	In favour of defendant	Unknown result	Total
ARGENTINA	-	-	1	1
CROATIA	3	-	-	3
FRANCE	1	1	-	2
GERMANY	1/2	1/2	-	1
ITALY	2	-	1	3
THE NETHERLANDS	-	1	-	1
SPAIN	1	2	-	3
UNITED KINGDOM	1	1	-	2
U S A	8	5	1	14
Total	16 + 1/2	10 + 1/2	3	30

There are various plaintiffs and defendants involved in legal proceedings instituted for collisions between aircraft and birds or wildlife, in above mentioned countries. Structure of these participants is shown in table bellow. It is noticeable that airport operators are designated as defendants in all countries (except in Germany). Namely, 15 airports, i.e. 27% of all defendants, are sued in 30 cases. In every second legal proceedings, an airport operator is a defendant.

COUNTRY	# CASES	PLAINTIFFS	DEFENDANTS
ARGENTINA	1	Airline Company	Airport , Ministry of Defence
CROATIA	3	Insurance Company Airline Company	Airport (2) Insurance Company
FRANCE	2	Private Company Insurance Company (7) Airline Company	Airport (2) State Chamber of Commerce General Manager
ITALY	3	Airline Company (2) Insurance Company	Airport (2) Ministry of Transport Port Authority ATC, CAA General Manager
GERMANY	1	Private Company	Private Person
THE NETHERLANDS	1	Airline Company	Airport
SPAIN	3	Airline Company (3)	Airport (3)
UNITED KINGDOM	2	Airline Company (2)	Airport (2) CAA County
UNITED STATES OF AMERICA	14	Insurance Company (3) Airline Company (5) Private Person (3) Private Company (2) Bank, City, CAA Environmental Organization (2), Lawyer Office	Port Authority (2) Airline Company County, Airport (2) State (8), City (5) CAA, Aircraft Manufacturer Engine Manufacturer General Manager ATC, Ministry of Defence

DEFENDANTS



This is a suitable moment and place for two things:

1. To answer a question: What are the main reasons why an airport operator is the first who will be sued?
2. To try to explain: What are the possibilities of exoneration of airport from liability in case of bird strike?

Before answering the first question and explaining the second point, it is necessary to emphasize several important facts.

3. EFFORTS OF AIRPORTS

Worldwide experiences demonstrate that many airport operators take reasonable measures to reduce and diminish bird strikes. It is evident that necessary preventive measures and activities described in different regulations, manuals, circulars and other acts are duly applied. All these actions are taken to minimize danger that birds may cause to air traffic.

Airports have at their disposal the following measures and activities:

- To carry out necessary inspections of runways, taxiways and other manoeuvring areas from time to time;

- To warn pilots timely about possible presence of birds or other animals at, or in the vicinity of airport by permanent NOTAM;
- To realise proper design, construction, operation and maintenance of airport areas and buildings;
- To implement proper manner of land use at, or in the vicinity of airport;
- To implement proper grass policy;
- To implement proper manner of zoning in the vicinity of airport;
- To use different kinds of adequate scaring devices;
- To obtain valid certificates issued for operation of airport, for airworthiness of aircrafts and for construction of engines;
- To organize proper education of personnel, particularly referring importance and consequences of bird hazard;
- To perform activities of permanent improvement in awareness of bird hazard;
- To ensure sufficient financial resources to take necessary measures and actions;
- To have various specialists (biologists, ornithologists, agronomists etc.) and other educated personnel at its permanent disposal;
- To realise timely and accurate communication among all air traffic participants, i.e. the appropriate communication among airport personnel, air traffic controllers and air carrier personnel in case of bird hazard or bird strike;
- To register all appropriate statistical data, as well as all other necessary records concerning airport inspections and patrols, measures in use, vehicle maintenance, cartridge purchase invoices, staff training reports, preliminary studies about potential danger of bird strike, adequate airport programs of protection of aircrafts from bird hazard, etc.

As we may notice, significant efforts are made and all mentioned activities and measures that are taken from the side of airports are structured so that, in any case, it may be proved that “eventual omissions” did not occur out of negligence, indifference or lack of taking of necessary safety measures.

But, unfortunately, all above mentioned is not always completely applied at many airports. Namely, the failure to exercise proper care in bird control at an airport and in its vicinities will, under valid law provisions, render the airport operator liable to give compensation to those who suffered loss as a result of airport operator failure. In other words, in the context of bird control, it could be said that a safe environment in which aircrafts can safely operate is not only desirable, but it is, in fact, essential, if civil liability at law is to be avoided. An airport operator must adopt certain procedures and be able to demonstrate that he exercised those procedures at, or before the time when an aircraft suffered a bird strike. A failure to exercise proper care will expose airport operator to liability. The mere fact that airport operator thinks he carried out its responsibilities will not help it in case a court disagrees.

In case of injury or death of passengers, crewmembers or third persons on the ground as consequence of a bird strike to an aircraft, and if that bird strike occurred for lack of following proper procedures, for lack of adequate bird control, or due to failure of an airport operator to take reasonable actions to prevent a bird hazard, then that airport operator is liable to face law suit filed from the side, or on behalf of these persons.

Sometimes, a responsible airport operator seeks guidance to best fulfil his functions, and he is able to demonstrate that bird control system in operation at particular airport, and at particular time when bird strike took place is the safe and satisfactory system, the one which demonstrates that, insofar as possible, in all circumstances, the airport operator takes every possible steps to eliminate bird hazard. In that case, that airport operator could have success in eventual lawsuit.

4. LIABILITY IN CIVIL AVIATION

There are two kinds of liability in civil aviation:

1. Air traffic participant (ATC agency, aircraft operator, airport operator) liability.
2. Third party liability.

In case of serious incident or accident at, or in the vicinity of an airport, or in the belonging air space, legal grounds for determination of liability and of damage compensation claims (either for properties or persons) are found as in different national legal regulations, so in international regulations like: Chicago Convention, Warsaw Convention, Montreal Convention etc. All these regulations form a legal framework for ATC, aircraft operator (air carrier) and airport operator liability. Airport operator liability will be dealt with in more detail in the next chapters.

As far as the second mentioned liability is concerned, it is important to emphasize that the first preoccupation regarding use of air space was the danger of objects falling from balloons, causing damage to persons on the ground or to their property. When air transport was born, it was felt that the liability of aircraft operator for damage to persons on the ground should be limited to certain extent, to enable it to develop its air transport activities in economical way.

There exists the concept and the problem of liability of user of air space with respect to third persons on the ground. It is a so-called *third party liability*, which is based on recognition of integrity of a person and on the need to protect that person's sphere, his way of life and his property against damage suffered from other persons or entities. It is the more so, when it concerns damage resulting from an activity of another person or entity with which a victim has nothing to do and in which it has no direct interest in. In that case, a person or an entity becomes a third party, an innocent victim of damage from an outside cause. The Rome Convention of 1952 and the Montreal Protocol of 1978 form an international legal framework for third party liability. The main objectives of these international regulations are to ensure: adequate compensation for victims, determination of limited liability, development of air transport and unification of international private laws.

However, on the global level (ICAO) experts are seriously involved in modernization process of Rome Convention in a last few years. Taking into consideration different kind of terrorism Special Group agreed to split the project into two conventions, one replacing the old 1952 Rome

Convention and one new convention dealing with the financial consequences arising from acts of unlawful interference with civil aviation, named as:

1. General Risk Convention, and
2. Unlawful Interference Convention or Terrorism Risk Convention

Taken together all remarks and proposals on the draft text of above mentioned conventions and debate for those who are or may be involved as policy-makers, legislators, lawyers, insurance brokers and underwriters engaged in support of international air transport and its users, in contemplation of the Diplomatic Conference which is soon expected.

5. CONDITIONS FOR POTENTIAL AIRPORT LIABILITY

In case of bird strike, a complete aircraft or some of its parts may be destroyed. That kind of damage may, but does not have to, influence the safety of further flight, depending on the point of bird strike, as well as on its intensity. Therefore, it is possible that an aircraft operator suffers greater or smaller:

- Direct damage – material damage of an aircraft;
- Indirect damage; or
- Non-material damage.

On the basis of previous statements, if an aircraft accident is caused by bird strike, it is possible that someone will bear certain consequences, i.e. a possibility to state damage liability is opened. With regard to particularity of air traffic, and when stating damage responsibility in case of bird strike, we have to bear in mind several criteria:

1. The exact point of bird strike;
2. The moment of bird strike – phase of flight;
3. The extent and amount of damage;
4. Consequences of bird strike with regard to safety of further flight;
5. Actions from the side of all air traffic participants that are taken permanently and/or immediately prior to the concrete bird strike, i.e. observation and control of birds appearance, scarring away of birds, lessening of birds population in all airport areas, etc.;
6. Parties that will be involved in eventual legal proceedings.

POTENTIAL LIABILITY



ELEMENTS

- ▶ **1. DAMAGE**
 - Direct damage (material damage of an aircraft or third persons on the ground)
 - Indirect damage (profit loss, passengers redirection, goodwill loss, inspection et al.)
 - Non-material damage (injures, mental stress or death of passengers, crew et al.)

- ▶ **2. CRITERIA FOR ESTABLISHING OF DAMAGE LIABILITY**
 - The exact point of bird strike
 - The moment of bird strike
 - The extent and amount of damage
 - Consequences of bird strike with regard to safety of further flight
 - Activities undertaken to avoid bird strike

- ▶ **3. WHO IS LIABLE FOR DAMAGE?**
 - Airport operator is the first party against which legal proceedings may be taken

- ▶ **4. LEGAL PROCEEDINGS**
 - Airport exoneration from liability
 - Partial airport liability
 - Complete airport liability

Usually, an airport operator is the first party against which procedures of stating whether all indispensable actions are taken, as well as of stating of eventual liability, are started. I consider that, in order to open the possibility of stating an airport operator damage liability, i.e. the possibility of filing legal proceedings against it, first of all, the criterion that the bird strike accident happened within determined airport area must be fulfilled. Actually, that criterion must be undoubtedly confirmed. And, when we mention airport area (surface area and reasonable air space height) in the context of possible liability, it exclusively and only means the airport area that is within protective fence that, together with existing objects, determines its real property.

In terms of proper protection, an airport operator must take all reasonable actions to lessen the possibilities of bird strikes. These actions are not limited only to airport area (application of different birds appearance control methods, scarring away of birds, and lessening of their populations), but, they must also be directed to realisation of feasible influence on local authorities that make decisions related to airport surrounding land use. Concretely, that means that an airport, in accordance with ICAO "Airport Planning Manual" – Part 2, "Land and Environmental Control", assumes commitment and duty to warn autonomous and governmental local community bodies that elaborate regional planning **not** to include any constructions of fruit, vegetable or cereal plantations, mobile restaurants, livestock farms, slaughter houses and grass growing fields within 3 km range of the airport referential point, **nor** any fish farms, rubbish heaps, livestock farms and other similar activities attractive for birds within 8 km range of the airport referential point.

With reference to implementation of air traffic safety measures preventing bird strikes, an airport must act with due care and attention, thus meaning that there must not be any negligence or carelessness in the respective actions. Usual procedures performed with due care and attention make conditional the creation of particular standards of care, the implementation of which is considered obligatory in airport procedures.

On the basis of quoted above, an airport operator must be aware of its responsibility and it must involve other air traffic participants in overall air traffic safety activities that promote qualitative, complete and timely exchange of information about appearance of birds at, or in the vicinity of airport, thus making them jointly responsible for implementation of bird strike prevention measures.

Hereby, it is extremely important to emphasize that all sides that with their decisions in any manner contribute to lessening of bird strike hazard, must be aware of that hazard to the full extent. In other words, besides comprised technical conditions, such decisions must contribute to development of consciousness of all air traffic participants with regard to particularity and greatness of bird strike danger as a threat to air traffic safety. If all mentioned above is not applied in a proper and correct manner, we are able to foresee the possible final consequences. At the same time, this is an answer to the first question.

In my opinion, if a bird strike happened outside an airport area, i.e. if the exact point of bird strike was outside airport boundaries, and if this fact was undoubtedly stated during the process, that airport operator can not, in any case, be liable for eventual damages. Therefore, it is really impossible to answer decidedly a question: whom an airline may claim damage compensation from in case of bird strike outside an airport area?

6. EXCLUSION FROM LIABILITY

In most cases, the liability of an airport operator in case of accident comes under civil law. Therefore, several elements have significant influence on the position of an airport operator as defendant, and on the final outcome (either success or failure) of legal proceedings instituted as consequence of bird strike. Some of these elements are:

- Prevention at, or in the vicinity of an airport (implementation of scarring devices and/or activities, adequate degree of hazard awareness, conscientious management, respect of regulations, correct land use etc.);
- Successful defence;
- Knowledge and experience of the judge in this matter;
- Sufficient number of qualitative proofs.

Qualitative proofs have one of the most important roles in defendant activities during legal proceedings. If a defendant wants to escape from liability, or at least from the part of it, the following is necessary:

1. To have all facts completely and correctly established.
2. To prove that everything that had to be done was done, and that eventual damage occurred without the fault of a defendant. Only if that is proved, the defendant can avoid damage liability. It is a question of so-called presumed liability of defendant. A defendant is liable unless he can prove otherwise. In other words, in eventual exculpation proceedings, the defendant must prove what was actually done from its side, in that particular case.

Taking into consideration the above statements, an airport operator shall not be liable for damage occasioned by bird strike if it proves that it had taken all available measures and activities that could reasonably be required to avoid that strike, or if it proves that it had been impossible to take such measures or activities, especially due to safety reasons. In that case, bird strike can be deemed an event caused by extraordinary circumstances, which could not be avoided, even if all reasonable measures had been taken. From the aspect of safety, some factors of time and place associated with particular thing (aircraft in flight) or event (bird strike) are not always considered to be out of ordinary factors. The extraordinary circumstances justifying airport operator behaviour at the moment of bird strike must be extraordinary in the sense of necessity to maintain total safety of flight. For example, such circumstances may occur in case of meteorological conditions incompatible with birds' behaviour and with operation of the concerned flight. Also, as plaintiff so defendant should, at all times, bear in mind the behaviour of birds being a physical circumstance that is often unexpected and/or unusual. All these circumstances represent so-called "mitigating circumstances". When properly presented in legal proceedings, they may produce an effect on reduction of damage liability or on exclusion from liability.

But, if a plaintiff can prove that an airport operator had committed an act, which resulted in a damage caused by wilful misconduct or by negligence, the possible exoneration from liability shall be disregarded.

In legal theory, "wilful misconduct" is defined as intentional performance of an act knowing that its performance will probably result in damage, or as intentional performance of an act in a manner that implies reckless disregard of its probable consequences.

"Negligence" is defined as failure to take reasonable, ordinary care. A person fails to take ordinary care if he/she does something that a person of ordinary prudence would not do under the same or similar circumstances. Failure to take ordinary care can also occur by omission, or by failure to do something that a person of ordinary prudence would do under the same or similar circumstances. Negligence becomes a 'legal cause' of damage if it directly and in natural and continuous sequence produces damage, or if it contributes substantially to its production, so that it may reasonably be said that had it not been for the negligence, the loss, injury or damage would not have occurred.

In this section, it is important to mention and briefly explain a Croatia case (Pula case, elaborated at Baltimore Conference, in 2004). Namely, this case may be a very good example for future cases in this matter. The Pula County Court (PCC) as second instance court (Court of Appeal) pronounced the judgment Gz-2141/00, of 18th April 2000, in favour of a plaintiff, and against airport operator as a defendant, dismissing the appeal of the defendant and confirming the first instance Municipality Court (MC) judgment. The PCC concluded that the MC had stated all facts regularly and with precision, and that it had applied valid material legislation.

According to the PCC judgement, the most important fact regarding the accused airport is that it is not liable on the grounds of objective liability but on the grounds of presumed liability. Namely, one of the defendant's activities – the maintenance of runway safety – does not represent a dangerous activity, nor does the runway represent a dangerous object.

However, the airport operator is liable according to the criteria of fault for damage occurred by negligence, or by omission to undertake measures or activities indispensable for air traffic safety.

Only in case an airport can prove that it took all available measures of bird strike protection and all other relevant activities immediately before particular occasion, it can be exempted from liability for that concrete strike. Therefore, the burden of all proofs is exclusively on the side of airport operator as a defendant. If a defendant has at its disposal qualitative and indisputable proofs of its activities, than it has a really great chance of final success in the litigation, i.e. the chance to be freed from liability. At any moment of legal proceedings, an airport operator must present firm arguments to prove that it had undertaken such activities that could not jeopardize the safety of aircraft, persons or property. This emphasizes the necessity for very serious approach of airport operator to act strictly according to all mentioned in point 3, above.

7. INSURANCE ASPECT

Very important segment in the field of commercial aviation is the insurance of property and persons. On this occasion, it is important to point out that, at times of appearance of first aircrafts, the risks asked to be covered seemed to insurers extremely difficult, frequent and connected with permanent danger of causing incidents and accidents. Hence, the starting forms of insurance avoided the coverage of risks of wrecking, i.e. of falling of aircrafts. Risks accepted at that time were: aircraft constructor and/or manufacturer responsibility, aircraft fire, and persons (passengers and crewmembers) insurance in case of accident.

In the course of the past century, two world wars and the period between them strongly influenced the development as of aviation, so of insurance that very quickly adjusted to the need of coverage of new risks. The joining of insurers on international level in pools, consortia, or groups was the basic presumption of the ability of coverage of continuously growing number of aviation risks.

The insurance now covers aircraft operators, as well as airport operators. Today, the risks not accepted as part of insurance are very rare. The exclusions refer more to manners and conditions of aircraft and/or airport use, than to the nature of risks.

The insurers, insurance companies that accept specific and harder risks in the field of aviation must:

1. Be specially trained for investigation and evaluation of risks, and for defining of damage compensations (technical basis);
2. On behalf of stating of premium amount, take into account the possibilities of considerable taking over of risk from the side of domestic insurance market and of transferring only the indispensable part on foreign re-insurers (economical basis); and
3. Have at their disposal the corresponding general insurance conditions conformed to domestic laws, as well as to international conventions (legal basis).

We generally distinguish the following kinds of insurances:

- Property insurance (airport operator; aircraft; goods and baggage – against loss or damage);
- Persons insurance (airport operator, passengers and crew on board of aircraft – against accidents);

- Aircraft operator liability insurance (passengers and third persons damages; goods);
- Airport liability insurance.

Very frequent risks in air transport that may, in their frequency, exceed the frames of other risks, are bird strikes at, or around airports. The largest number of bird strikes occurs during landing and/or take-off. Bird strike risks are within frame of aircraft operator property insurance, and of airport liability insurance.

In the process of regulation of property, persons and activities insurance, relations between airport operator as the insured and insurance company as the insurer are arranged with an agreement and with insurance policy, respectively.

The same way, in the process of regulation of performance of activities, relations between airport operator as the insured and insurance company as the insurer are also arranged with an agreement and with insurance policy, respectively.

A policy, i.e. an insurance agreement, regulates the rate and the manner of the insured – airport – liability for damages caused to persons and property whilst performing its activities in the course of insurance period, and if they occurred due to actions or negligence of the insured, or of workers employed from the side of the insured, or as consequence of works performed, or machinery or equipment used in activities of the insured.

With this document the insurer actually takes over the obligation to pay on behalf of the insured any amounts he is obliged to pay on the basis of its activities performance liability, and in particular:

1. For damages resulting from injury or loss of life of passengers and other persons, what includes damages caused by food and drinks consummation in the insured restaurant, including aircraft catering premises;
2. For damages caused to an aircraft to which the insured is offering airport services and/or runway and belonging devices and equipment use, as well as during stay and guarding of an aircraft at an airport;
3. For damages of passengers personal belongings, baggage, goods, post, etc.

Consequently, an airport as the insured is liable to undertake all necessary measures and to ensure adequate surveillance at, and around airport in order to organise works related to its activities safely, and in accordance to valid regulations. Therefore, the insurer may withhold the occurred damage compensation if the damage had occurred as consequence of indolence or severe negligence of the insured, i.e. the insurer reserves the right of regression towards the insured for the amount paid in case of eventually later stated fact that the liability of the insured had been the result of its intention or of severe negligence.

In case of damage of an aircraft due to bird strike within an airport area, an aircraft operator reserves the right to demand from its insurer a damage compensation for material, non-material or indirect damage, because these kinds of damages are generally covered with this kind of insurance. If, in course of proceedings, it was stated that airport is responsible for damage, the insurer of aircraft operator might, through subrogation right, claim compensation from the airport.

On the basis of that right, the insurer is entitled to compensate, completely or in part, the loss suffered by payment of damage compensation.

8. PROPOSALS AND SUGESTIONS

And finally, as a result of bird strikes, many Civil Aviation Authorities or similar bodies addressed the aviation industry to the bird hazard issues, together with additional programs and recommendations. Therefore, regardless of the quantity of operations, it is necessary to organize an effective program that deals with bird hazards at an airport. This kind of program represents important step in direction of airport defence in eventual litigation. The following recommended actions, with some adaptations, may be universally applied to most airports in the world:

- To acknowledge that bird hazards exist;
- To assess legal implications of airport bird hazards;
- To assign responsibility and delegate authority for developing, initiating and maintaining of effective bird management program;
- To identify sources of technical assistance;
- To identify bird hazards;
- To acquire knowledge about bird management program and to exercise it periodically;
- To allocate resources, funds, and personnel;
- To develop routine training programs;
- To initiate bird management program;
- To develop qualitative control procedures;
- To maintain daily records of bird management program;
- To evaluate bird management program;
- To establish positive bird strike reporting procedure.

If an airport personnel applies and realises these activities in high percentage, that may be a clear indicator that airport operator recognizes bird hazards, as well as negative aspects of their possible consequences. This kind of responsible behaviour of an airport operator represents guarantee of final success in eventual legal proceedings.

9. CONCLUSION

Liability for damages caused by bird strikes within airport responsibility area represents the risk that, obviously, brings into question the whole system of measures predicted for prevention of

such events. No matter whether the measures are prescribed by higher legal act or determined by some lower act, they must be implemented regularly and without exemption.

From the aspect of presumed liability, it is important, and it represents legal basis proclaimed by existing court praxis as relevant for airport liability model, that potentially liable airport, whose liability is actually presumed, proves that it undertakes all measures predicted for prevention of such events. In other words, the person in charge is obliged to prove that, in definite circumstances, all required actions were undertaken in order to avoid definite event.

Legal proceedings in this matter show that it is possible to give legal qualifications of airport damage liability in question in different ways, from the attitude that bird strike damage represents a pure accident, over the opinion that airport is liable as a contractor that runs dangerous activity, to the evaluation grounded on the principle of presumed liability. The court praxis in some countries has finally stipulated the last fact as the correct one. That way, the dilemma is solved by establishing a relatively severe form of liability, and, at the same time, by allowing a possibility of proving the conditions for exemption from liability, where an airport is the party charged with providing evidence.

Every singular case of bird strike actually represents the possibility for evaluation of protective measures application and arises a question does an airport do everything predicted in safety instructions or similar acts to avoid bird strike. Consequently, it is obvious that, from case to case, some elements may be differently evaluated.

Every act and action of an airport referred to application of safety measures must be entered in respective official records, in order to enable its eventual identification and demonstration. Contrariwise, even on the assumption that safety measures are respected, there exists a practical possibility that an airport will be charged for damage.

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