

DIARY DATES

**EUROPEAN BUSINESS AVIATION
ASSOCIATION - AIR OPS EUROPE 2020**

4-5 February 2020

Brussels, Belgium

Francesco Grassetto, speaker

**CAPA QATAR AVIATION AEROPOLITICAL AND
REGULATORY SUMMIT 2020**

4-6 February 2020

Doha, Qatar

Laura Pierallini, Speaker

IATA LEGAL SYMPOSIUM

19-21 February 2020

New York, USA

Studio Pierallini, Silver Sponsor

Laura Pierallini, Judge and Presenter of The

Constance O'Keefe Aviation Law Writing Award

3RD TRAVEL LAW FORUM

27 March 2020

Istanbul, Turkey

Laura Pierallini, speaker

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**SCOPE OF THE MONTREAL CONVENTION –
RECENT DECISION OF THE ITALIAN SUPREME
COURT**

By Marco Marchegiani

By decision no. 32778 dated 13 December 2019, the Italian Supreme Court (namely “*Corte Costituzionale*”) has ruled about the scope of the Montreal Convention of 28 May 1999, which establishes the airline liability in case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo.

In particular the Court has confirmed that the Montreal Convention applies to: (i) all international carriage of persons, baggage or cargo performed by aircraft for reward; (ii) gratuitous carriage by aircraft performed by an air transport undertaking; as provided by article 1 thereof.

On the contrary, a private air transport performed for courtesy reasons by a non-commercial operator does not fall within the scope of the Montreal Convention.

The judgment of the Supreme Court came after a long lasting legal proceeding started by the successors of a person who died in an aircraft

accident, where the operator was a private entity (i.e. not a licensed air carrier). The successors claimed compensation from such operator and the latter in turn called the insurance company into the proceeding for indemnity purposes. The first instance decision recognized the liability of the carrier and its indemnity rights towards the insurance company. Afterwards, in the second instance the Court of Appeal confirmed the previous decision and so rejected the insurance company’s challenge that was based on the two-years limitation period for damage compensation, pursuant to 35 (Limitation of Actions) of the Montreal Convention, according to which “*The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. (...)*”.

The insurance company challenged also the second instance decision before the Supreme Court on the basis of three pleas in law. As far as this analysis is concerned, the second and most important plea regarded the infringement of articles 29, 30 and

35 of the Montreal Convention, as implemented in Italy by art. 941 of the Italian Navigation Code. The challenging party argued that the second instance judge wrongly considered the two-years limitation period - provided by the Montreal Convention - as not applicable to the disputed case (i.e. gratuitous air transport performed by a non-commercial operator) and accordingly did not state the time-bar of the successors' claim. This plea was considered ungrounded by the Supreme Court. Specifically, on the basis of the interpretation given to the mentioned article 1 of the Montreal Convention, the Supreme Court pointed out that the same is enforceable when there is a contractual obligation, for free or for reward, between the air carrier and the passengers. In case of gratuitous carriage, the transport must be performed by an air transport undertaking. In this way the carriage activity can be considered as a business matter. Instead, in the case at issue the carriage resulted in a mere courtesy transport by a private operator, which did not constitute a contractual obligation but a simple fact, so that it cannot fall within the scope of the Montreal Convention.

Therefore it can be concluded that in case of gratuitous carriage not performed by an air transport undertaking, damage compensation rights do not expire within the two-years limitation period established by article 35 of the Montreal Convention.

In other words, when the relationship between the parties is not regulated under a contract, regardless if for free or for reward, the general principle of *neminem laedere* applies and, as a consequence, any potential claim is subject to the ordinary time-bar rules for liability in tort.

AVIATION - NEW TRENDS AND CHALLENGES

By Francesco Paolo Ballirano

According to the last edition of the *Global Aerospace and Defense Industry Outlook*, released by Deloitte, in 2020 commercial aircraft manufacturing is going to reach the number 1.900 aircraft, compared to 1.450 estimated in 2019, thus resulting in more than 30% increase.

In particular, positive forecasts on the regional jet industry are highlighted. Regional jet demand is foreseen to considerably increase in the next twenty years, up to 5.000 aircraft. The production growth will mainly involve Asia-Pacific, Middle

East and Latin America areas, due to the increase of travellers - for both business and leisure purposes - and consequential demand for more regional connections.

Moreover, innovation in the aerospace sector will follow three paths:

(1) Electric powered aircraft. Well established companies, like Rolls Royce and Safran, and various start-ups aim at reducing emissions, flight noise and costs, so they have begun to develop electric propulsion systems to tackle the increasing levels of CO2 emissions, related to the growing air transport demand worldwide.

(2) Urban Air Mobility (UAM). The development of UAM, especially consisting of passenger drones, is expected to speed up in the next years, in parallel with the need to face a number of challenges related to these new means of transport, such as new regulations, new infrastructures, enhanced traffic management systems.

(3) Automated flight decks. This equipment will reduce the need of cockpit crew members and lead to a related cost-cutting for air carriers. This automation development is also expected to solve the shortage of pilots, which in the next few years will become an actual issue for airlines due to the continuous increase of flight operations worldwide.

According to the Outlook released by Deloitte, these are the main goals to be achieved by the aviation industry in terms of technology and digital processes, with the aim to improve productivity and efficiency in order to be able to meet the high expectations placed on the sector.

FOCUS ON THE IATA LEGAL SYMPOSIUM

The world's premier annual aviation law event will take place in New York, USA, from 19 to 21 February 2020. This year the IATA conference will examine the key challenges of our legal and regulatory environment. Following the Legal Forum on the first day, the two days conference programme will include hot topic plenary sessions. Among the others: (1) Current Legal Issues for Airline In-House Counsel and Airline Insurers; (2) The Real Impact of Environmental Regulation; (3) Mutual Recognition of Safety Certification. In the afternoon of Day 2, our Firm will be the sponsor of the 'Constance O'Keefe Writing Award' that will be presented by our Name Partner Ms. Laura Pierallini.