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GÖHMANN

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Below you will find concise descriptions on fundamental points of law relating to international and national air crashes. This information, however, cannot serve in the stead of detailed legal advice.

INTERNATIONAL FLIGHT

If the destination of a passenger's flight is beyond the territory of one country, this constitutes a case of international air traffic. Accordingly, a national flight is a flight with both the place of departure and the place of destination in the Federal Republic of Germany. As regards any claims for damages, the crucial questions are: in which state was the respective airline headquartered, what type of ticket was bought and where it was bought. Another essential issue is whether all international and national flights involved (e.g. feeder or connecting flights) were booked on one single ticket. If this is the case, then international law will be applicable, otherwise most likely national law.

WARSAW CONVENTION (WC)

In the event of international flights – including any liability issues in the event of air crashes – the Warsaw Convention of 1929 and its numerous amendments used to serve as a basis. Until very recently, this basis had been in effect with regard to the liability of airlines of most of the countries of the world.

The liability regulations of the WC were rigid, and they were not very much in favour of passengers or their families. That is why, for many years, it was felt to be no longer adequate.

IATA INTERCARRIER AGREEMENT

The big international airlines at first responded to this situation by internally concluding the IATA Intercarrier Agreement, which eased the liability criteria and provided for more generous liability standards. Accordingly, the question to be scrutinized in the event of any crash was whether or not the respective air carrier had endorsed the Agreement.

MONTREAL CONVENTION

This new Convention, singed on 28 May 1999, provided completely new rules relating to the liability of air carriers. By now, the Montreal Convention has been ratified by over 80 states. the EU member states ratified the Convention in April 2004, and accordingly it has been binding law in Germany and France ever since. In Brazil, the Convention has been binding law since 2006.

MONTREAL CONVENTION – FUNDAMENTAL LIABILITY RULES

According to the provisions of the Montreal Convention the air carrier (i.e. the passenger's contracting party) is liable without restrictions for any damage caused by physical injuries to or the death of a passenger, or by delay, or on account of loss of or damage to his or her luggage. Liability is limited in the following instances:

- **Absence of fault:** if the air carrier can provide evidence in court that the accident occurred with its employees not even liable for as much as negligence;
- **Accidence caused by others:** if the air carrier provides evidence that the accident was culpably and unlawfully caused by others (e.g. in the event of terrorist attacks).

In these cases the air carrier's liability for the entire accident is limited to 100,000 special drawing rights (SDR).

This is an artificial currency of the International Monetary Fund, its value based on a basket of key international currencies. At the moment, one SDR is equal to 1.20 EUR

In the case at issue, any limitation to the air carrier's liability is extremely unlikely.

CEILING TO CLAIMS FOR DAMAGES

However, you cannot start from the assumption that in the event of any damage or loss there would be no limits to the amounts of compensation paid. Because you will, in any event, substantiate the damage actually incurred (see also "German law of damages").

VENUE

According to the Convention, there is an option to sue the air carrier in the courts of various states. Whether or not any claims for damages can be asserted successfully will frequently depend on adequate and suitable legal advice and decisions by a lawyer.

As regards the AF 447 incident, litigation in France is an option for two different reasons: for one, France was the state of destination of the flight, and for two, it is the country where EADS (Airbus) is headquartered.

Never believe US attorneys who tell you that they can recover high amounts of compensation on your behalf in the USA for pain and emotional suffering! Due to the „forum non conveniens" rule, the US courts will not accept such claims. Exceptions, which are extremely rare, are possible only in the presence of some definite US-relatedness of the case, which, however, does not exist in the case at issue.

GERMAN LAW OF DAMAGES

According to the law currently in effect, German courts only very rarely award compensation for any immaterial damage sustained by the bereaved family. To succeed in this respect, in-depth arguments have to be presented to the court.

On the other hand, it is normally not too difficult to claim damages for loss of support provided that the bereaved family member(s) was or were economically dependent on the person that was killed. This applies both to the family's breadwinner and to the person who managed the household. In this respect, German court decisions have been generous though also accurate.

In addition to that, the costs of hospital treatment and funeral as well as the equivalent value of any lost or damaged property items are, naturally, also

eligible for compensation.

PRESCRIPTION – ATTENTION!

Whereas under German law [BGB] any claims for damages will normally become statute-barred three years from the date on which the damage became known, any such claims on an airline must be asserted within two years from the date on which the flight at issue was completed or would have been completed. Otherwise these claims will become statute-barred.