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THE CONCEPT OF STATE RESPONSIBILITY TO A PERSON UNDER UKRAINIAN AIR LAW

Abstract. The article **aims** to study the legal regulation of Ukraine's responsibility to a person under air law. The research objective is to determine the basis of Ukraine's responsibility to a person under national air law. **Research methods.** The article uses the logical method of cognition, comparative analysis, and the method of theoretical research. An innovation involves a comprehensive attempt to determine the legal prerequisites (legal grounds, factual grounds, and conditions of state responsibility) based on international law and national legislation, in particular public and private law. The present study relies on a critical analysis of the norms of international air law and modern national law of Ukraine and law enforcement. The study **concluded** that the foundations of the concept of Ukraine's responsibility are laid in a universal international treaty – the Convention on International Civil Aviation of 1944. The central pillar of state responsibility is the recognition of the State's complete and exclusive sovereignty and ensuring the safe use of airspace. Ukraine has recognized the obligation to ensure flight safety and thus is responsible to a person for the safe use of sovereign airspace for aviation purposes, which is also confirmed by the constitutional obligation of Ukraine to ensure human rights and freedoms. In case of violation of such an obligation and causing harm to an individual, Ukraine will bear legal responsibility under the European Convention for the Protection of Rights and Fundamental Freedoms of 1952, the Constitution of Ukraine, the Law of Ukraine "On Transport", and Air and Civil Codes, which will take the form of compensation for moral and material damage, i.e., payment of funds. For causing harm to a person, Ukraine will bear civil liability under the Convention for the Unification of Certain Rules for International Carriage by Air of 1999, and the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface of 1952. If a violation of the principle of safe airspace is committed by public authorities or officials, they will be subject to criminal, administrative, disciplinary, and civil liability.

Key words: individual, state, responsibility, air law, international legal responsibility, Ukraine.

1. Introduction

According to the definition of A.A. Kozlovskiy and Z.I. Boyarska (Kozlovskiy, Boyarska, 2010, pp. 8–12), the air law of Ukraine is a complex branch of law, which, firstly, constitutes an independent system of law with its specific branch and interbranch institutions; secondly, as a set, comprises a block of norms of another law branch (e.g., transport law): constitutional law, civil law, administrative law, criminal law, economic law, environmental law, land law, etc. Scientist V. V. Kostitskiy (Kostitskiy, 2008, pp. 4–9) notes that air law should not be identified with aviation law, as it is a broader branch of law regulating sovereignty, the general principles of airspace use for economic needs, environmental safety of the airspace, aviation law (current air law), and statutory regulation of the placement of high-rise buildings.

However, within this article, we deal with the concept of the Ukrainian State's responsibility to an individual under air law in terms of aviation law, that is, the branch of law regulating the application of air law toward civil aircraft flights. Scant attention has recently been paid to the responsibility of the State of Ukraine in air law. The following authors devoted their contributions to separate aspects of state responsibility in air law: O.V. Malovatskiy, V.V. Kostytskiy, A.A. Kozlovskiy, Z.I. Boyarskiy, O.M. Hrihorov, O.V. Brusakova, H.V. Tsyrot, K.A. Vazhna, P. Dempsey, N.M. Onishchuk, and J. Crawford.

The article aims to study the concept of Ukraine's responsibility under air law and determine the status of regulation of the State's responsibility to an individual. The article is a scientific attempt to establish whether Ukraine, under current legislation,

is responsible to an individual for airspace use for aviation purposes. The methods used in the study involve comparison, which allows correlating the change in the responsibility concept; the method of logic was used to draw conclusions based on assumptions; analysis and theoretical research include attempts of scientific cognition of state responsibility under air law.

An innovation is the determination of state responsibility following the national air legislation of Ukraine. The present study relies on a critical analysis of modern developments of Ukrainian scientists, norms of law, and practice regulating different aspects of state responsibility to an individual for using the airspace.

2. Constitutional legal foundation of the state responsibility concept

Article 3 of the Constitution of Ukraine as of June 28, 1996, No. 254k/96-BP stipulates that human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State.

It can be assumed that the above article of the Constitution enshrines the legal principle – the responsibility of the State to the individual. In other words, it is reasonable to assert that Ukraine has undertaken to act in the interests of the individual to ensure their rights and freedoms, and it is this obligation that constitutes the essence of Ukraine's functioning as a state. Our assumption is justified by paragraph 4 of item 2 of the Decision of the Constitutional Court of Ukraine dated 30.05.2001 No. 7-рп/2001 (case on the liability of legal entities): the court clarified that the Constitution of Ukraine enshrined the principle of the responsibility of the State to the individual for its activities, which is primarily manifested in the constitutional definition of the State's duties specified in Articles 3, 16, 22 of the Constitution. Moreover, such responsibility is not limited only to the political or moral responsibility of public authorities to society but also has certain features of legal responsibility, i.e., the application of public measures (in the present case – constitutional or international law) to the State and its bodies for failure to perform or improper performance of their duties.

The above supports our previous assumption that the Constitution of Ukraine enshrines the obligation of Ukraine (as a State) to guarantee the observance of human rights and freedoms; in case of violation of such obligations,

legal responsibility comes to the State in the form of constitutional-legal or international-legal implications.

Thus, pursuant to the Constitution, the responsibility of Ukraine as a State to an individual is nothing more than the liability of the State to comply with obligations to ensure the inviolability of human rights (*primary duty*), and if human rights guaranteed by the Constitution are violated, a new obligation (*secondary duty*) arises to restore violated rights that entails applying public-legal and international-legal measures. This is how international legal responsibility is defined in the modern doctrine of international law (Crawford, 2013, pp. 45-92). However, it should be noted that the State may also be subject to private or civil law liability for violating international legal and constitutional obligations. Such an assumption is substantiated by paragraph 3 of the decision of the Constitutional Court of Ukraine dated 30.05.2001, No. 7- рп/2001, which declares that the division of legal responsibility according to the branch structure of law into civil, criminal, administrative and disciplinary is generally recognized. The conclusion must be interpreted with reference to paragraph 22 of Article 92 of the Constitution of Ukraine, which ascertains that exclusively the laws of Ukraine determine the principles of civil liability, acts that are crimes, administrative or disciplinary offenses, and ensuing liability. Such norms should be understood in such a way that exclusively the laws of Ukraine shall regulate the principles of civil liability (general grounds, conditions, forms of liability, etc.), the grounds for criminal, administrative and disciplinary liability, acts that are crimes, administrative or disciplinary offenses (the formal elements of offenses that constitute their bodies), and liability for them.

The logical conclusion is that the Constitution of Ukraine enshrines the constitutional liability of Ukraine, as a State, to act in such a way as to ensure the exercise and observance of human rights and freedoms, which transformed into a legal principle – the responsibility of the State to an individual for its activities. And if the State does not comply with obligations to ensure human rights and freedoms, there emerges a responsibility of the State: not only moral or political responsibility of public authorities, but specific criminal, administrative, disciplinary, civil, and international legal responsibility.

In turn, the constitutional grounds for certain types of liability are enshrined in Articles 80, 81, 91 of the Constitution – the responsibility of public authorities; Articles 56, 64, 153 of the Constitution – everyone has the right

to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of state authorities. At the same time, the very grounds, conditions, consequences and acts that constitute an offense shall be defined in special laws (Part 22 of Article 92 of the Constitution of Ukraine). Moreover, the legal responsibility of the State under national legislation follows branch nature, that is, each type of responsibility, depending on law branches, is characterized by its own special features.

However, the constitutional and legal concept of the responsibility of the State to an individual will be incomplete if the foundations of the State's international responsibility under the current Constitution are omitted.

In particular, Article 55 of the Constitution of Ukraine establishes that everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant, and Article 152 of the Constitution of Ukraine obliges the State to compensate for material or moral damage inflicted on physical and legal persons by the acts or actions deemed to be unconstitutional. In the event that a court verdict is revoked as unjust, the State compensates the material and moral damages inflicted by the groundless conviction (Article 62 of the Constitution of Ukraine) (decision of the Constitutional Court of Ukraine dated 30.05.2001 No. 7-rp/2001 (case on liability of legal entities).

Part 1 of Article 9 of the Constitution of Ukraine stipulates that international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine.

In view of these provisions, it can be argued that Ukraine, as a State, is responsible to a person not only under the Constitution but also international legal treaties, according to which it is assumed obligations to respect and guarantee human rights. The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (European Convention) is an unconditional and most successful example of the State's obligation to respect human rights. Ukraine acceded to the Convention in 1997.

The preamble of the European Convention states that its parties have the primary responsibility to secure the rights and freedoms defined in this Convention, and if the European Court of Human Rights (ECHR) finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only par-

tial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party (Article 41 of the European Convention). Following the above provisions, in case of violation of human rights, which are guaranteed by the European Convention, Ukraine can be brought to international legal responsibility in the form of fair satisfaction. It is essential to realize that satisfaction involves not only the payment of funds but may oblige the State to take other actions aimed at restoring violated human rights (Tisnogub, 2022). In this context, it is emphasized that the European Convention provides for a special mechanism for the responsibility of the State to a person when it becomes a defendant before the court for violated human rights, but the legal basis is the international legal obligation of the State to a person for the observance of their rights. And this mechanism, unfortunately, is the exception, rather than the general rule. The traditional way of protecting a violated human right against a State is provided for in Article 33 of the European Convention, which stipulates that any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Part. In other words, there is a generally accepted doctrinal understanding of the responsibility of a State in international law under which it is responsible for breach of international obligations to another state, but not to a person, and therefore the institution of diplomatic protection is applied (Crawford, 2006). Cases of appeals to the ECHR against Ukraine are quite numerous; there are also many cases of the State's appeal on the side of the injured persons against another contracting party to the European Convention based on Article 33, in particular, Ukraine filed nine lawsuits against the Russian Federation (ECHR 069 (2021) 23.02.2021), and the Kingdom of the Netherlands joined the lawsuit of its citizens against the Russian Federation regarding the consequences of the downing of MH-17, a passenger plane that conducted the flight over the territory of Ukraine in 2015.

Therefore, from the above, it is possible to come to a preliminary conclusion that the Constitution of Ukraine has enshrined the foundations of the concept of Ukraine's responsibility to a person, the main thesis of which is: "the State acts responsibly before a person in compliance with his or her rights that lays the groundwork for directing state activities". The thesis is the legal basis of the constitutional principle of the responsibility of the State (state authorities) to a person. If the principle is violated, Ukraine bears responsibility, grounds, conditions, forms, types, the consequences of which

should be defined in the law. At the same time, the responsibility of the State for fulfilling international legal obligations to respect human rights goes beyond the regulation of national legislation and is established by international treaties and other norms of international law. Indeed, the Constitution of Ukraine, implementing the principle of the State's responsibility to the individual, established constitutional mechanisms for recognizing and implementing the decision of international institutions as a reaction to Ukraine's violations of human rights.

3. International legal foundations of the state responsibility concept under the air law of Ukraine

Ukrainian scientists, involving O.M. Grigorenko (Grigorenko 2020, pp. 82–85), argued that although air law originated from fragmented national regulations, it was developed in international law, in particular, international treaties. The international legal framework of air law or the conditional constitution of modern international law is created by the Convention on International Civil Aviation of 1944 (Chicago Convention of 1944) (Dempsey 2015, pp.1–18). The States which acceded to the Chicago Convention of 1944 have agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically. According to Article 1 of the 1944 Chicago Convention, the contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory. The principle is specified in the 1944 Chicago Convention through a range of provisions, in particular Article 6, which provides exclusively for the authorization of using the sovereign airspace for international regular traffic; Article 8 highlights that no aircraft without a pilot are prohibited from flying in sovereign airspace without the authorization of the relevant State. The State which owns the airspace over its territory shall establish rules for the use of airspace (Articles 11, 12); determines prohibited and restricted areas for flights (Article 9), as well as States shall take measures to prevent the spread of diseases (Article 14) and implement customs policies (Articles 10, 23, 24), policies for determining charges for the use of airspace and airports (Article 15) and establish standards and requirements for the technical condition of aircraft and their documentation (Article 25-39). Thus, recognizing the complete and exclusive sovereignty of the States over the airspace over their territories, the 1944 Chicago Convention recognizes the full authority

of the State and its bodies to regulate the airspace use over the territory of a sovereign State. Ukraine acceded to the Chicago Convention on September 9, 1992. At the same time, since Ukraine has been authorized to establish the procedure for using the airspace, on the other hand, Ukraine is responsible for the consequences of establishing such an order and its observance by all entities that use the airspace. On the one hand, Ukraine is responsible to other States that are the Parties to the 1944 Chicago Convention, which is confirmed by Article 12 of this Convention, which obliges the States to ensure that aircraft comply with flight regulations and maintain that such requirements are uniform and meet accepted international standards (Article 37 of this Convention). On the other hand, Ukraine is responsible for establishing the rules for the airspace use and its actual use in a manner consistent with Article 3 of the Constitution of Ukraine, which proclaims that human rights and freedoms and their guarantees determine the content and direction of the State's activities. The best example of the correlation between Ukraine's international legal obligations arising from the 1944 Chicago Convention and constitutional obligations to respect human rights can be illustrated by the human right to life.

Article 27 of the Constitution of Ukraine stipulates that every person has the inalienable right to life. No one shall be arbitrarily deprived of life, and Article 50 of the Constitution of Ukraine holds that everyone has the right to an environment that is safe for life and health. In turn, the preamble of the 1944 Chicago Convention contains an obligation of the States Parties to ensure the safety of the use of airspace for civil aviation purposes. In addition, as stipulated by Article 9 of the Constitution of Ukraine, international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. Hence, one can argue that Ukraine, by virtue of the provisions of the 1944 Chicago Convention and the Constitution of Ukraine, undertook both to the Participating States to ensure the safe use of airspace within its territory and to a person by virtue of the provisions of the Constitution to ensure the safe use of airspace and prevent violations of human rights during the use of airspace. Consequently, Ukraine has implemented the principle of ensuring (securing) the safety of civil aviation in domestic air law, which is designed to guarantee the observance of the human right to life. And, in case of its violation, it will bear responsibility, both international and legal responsibility, in accordance with the Constitution and laws of Ukraine.

4. The state responsibility concept for ensuring the safety of civil aviation exemplified by a bilateral agreement between the United States and Ukraine

As of the date of writing the present article, Ukraine is a party to seventy bilateral international treaties on international air traffic, twenty-six of which are with the countries of the European Union, and numerous treaties governing air transportation. We have noted above that the 1944 Chicago Convention guaranteed that the sovereign airspace of any State shall be used only upon the prior authorization of the State exercising sovereignty over the airspace. One of the ways to implement such sovereignty is the conclusion of international treaties which are the groundwork for international air traffic, including air transportation.

Agreements on international air traffic are mainly typical and slightly different in content. One of the last agreements concluded by Ukraine is the Air Transport Agreement between the Government of the United States of America and the Government of Ukraine, which was ratified by the Verkhovna Rada of Ukraine on November 4, 2015.

The preamble of the agreement indicates that it is based on the Convention on International Civil Aviation of 1944, and it should be understood that in the development of the convention's principles, Ukraine and the United States agreed to use the airspace of Ukraine and the United States in the manner provided for in this agreement. We will immediately pay attention to Article 6 "Safety" and Article 7 "Aviation Security", which are of fundamental importance. Article 6 stipulates that to ensure the safety of air transportation, each Party shall recognize as valid certificates of airworthiness, certificates of competency, and licenses issued by another Party. However, if a State fails to comply with the minimum safety standards provided for in the 1944 Chicago Convention and fails to remedy the deficiencies, the other State may take action against the air carrier of the non-compliant State. The above provisions stipulate the obligation of Ukraine to ensure proper requirements for aircraft and training of their crews to guarantee the safety of air transportation of passengers. In case of violation of such provisions, restrictive measures may be applied to Ukrainian carriers, e.g., annulment of documents issued by Ukraine, which entails a ban on flights over the territory of the United States. The current article provides for the obligation of Ukraine to ensure carriers (enterprises and organizations) comply with international standards of aviation safety. In international law, these standards are covered by the term "aviation safety" (Malovatskyi,

2018, pp.66-80). Due to Ukraine's non-compliance with flight safety standards, it will be liable to the United States, and carriers (enterprises and organizations) will be indirectly liable in the form of a ban on transportation (suspension of flights). The responsibility of Ukraine will be to suspend or annul the air traffic agreement based on the provisions of Article 60 of the Vienna Convention on the Law of Treaties (1969).

Such examples are numerous in international law (Rokita, 2000, pp. 236). The consequences of non-compliance with aviation safety standards by the state, including in international air law with the participation of Ukraine, are regulated by international treaties, which have been called the source of private international air law (Tsirat 2021, pp.1.36). These areas are as follows: the Convention for the Unification of Certain Rules for International Carriage by Air of 1999 – Ukraine acceded to the Convention in 2008; the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface of 1952 (Rome Convention), which may subsequently be supplemented with the Convention on Compensation for Damage Caused by Aircraft to Third Parties of 2009, which has not yet entered into force, and the Convention on Compensation for Damage Caused by Aircraft to Third Parties in the Event of Unlawful Interference of 2009, which has also not entered into force. These conventions enshrine the property (civil) liability of the carrier or aircraft operator for causing harm to a person as a result of a violation of an international air carriage contract or causing damage to a foreign aircraft on the surface. It is decisive that, in accordance with Article 2 of the Convention for the Unification of Certain Rules for International Carriage by Air of 1999, the state or its enterprise is liable to a passenger – a person – for causing damage in the event of non-fulfillment of obligations under the contract of international air carriage. A similar provision is available in article II of the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952, as of 23 September 1978, which establishes that responsibility for damage caused by an aircraft registered in a State will be borne by the air carrier. It can be concluded from the above that the Ukrainian legislation has transformed the principle of ensuring the safety of civil aviation, which was first enshrined in the Convention on International Civil Aviation of 1944. Accordingly, Ukraine is responsible for compliance with international legal obligations to ensure flight safety to the United States and bears civil liability to a person for violation of the obligation to ensure the safety of trans-

portation based on the Chicago Convention of 1944, the Convention for the Unification of Certain Rules for International Carriage by Air of 1999, and the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed in Rome on October 7, 1952. The responsibility of the State, and that part of the relevant legal institution relating to specific civil liability, is regulated in Ukrainian civil legislation, which will be covered below.

5. The state responsibility concept for compliance with aviation safety under Ukrainian air law as exemplified by a bilateral agreement between the United States and Ukraine

Analyzing the most important aspects of Ukraine's responsibility for compliance with international obligations to ensure the safe use of the airspace for air transportation, we will again refer to the 2015 Air Transportation Agreement between the Government of the United States of America and the Government of Ukraine. In accordance with Article 7 "Aviation Security" of the Agreement, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Moreover, the Parties to the Agreement have determined that a range of international treaties concluded to against acts of unlawful interference in the security of civil aviation are part of this agreement, namely: the Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed in The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the 1971 Montreal Convention, signed at Montreal on 24 February 1988. Pursuant to the above conventions, any act of physical influence on the crew or aircraft, threatening with destruction or damage, as well as unlawful seizure of control thereof, is an act of unlawful interference with civil aviation safety, and each of the parties to these Conventions is obliged to define it in national legislation as a crime and to prosecute persons for their commission. In turn, Ukraine and the United States agreed that in case of non-fulfillment of obligations to ensure aviation security in accordance with the standards of the International Civil Aviation Organization, the other party has the right to stop aircraft flights in its airspace. In addition, in case of the agreement's violation, the provisions of Article 60 of the Vienna Convention on

the Law of Treaties of 1969 and the Air Transportation Agreement between the Government of the United States of America and the Government of Ukraine of 2015, which fully complies with paragraph c) of Article 3 of the Convention on International Civil Aviation of 1944, which provides for the right of a state to stop flights, may be applied to Ukraine equally as to the United States. It should also be noted that since the agreement between Ukraine and the United States includes, as part of it, conventions for the suppression of acts of unlawful interference with civil aviation safety, according to which Ukraine and the United States are obliged to comply with the obligations arising from them, and thus, they are responsible for their non-compliance. From the above considerations, two theses follow: for violation by Ukraine of Article 7 of the 2015 air traffic agreement, the United States has the right to stop the flights of any aircraft, and not only state ones. This may mean that aviation undertakings, whether public or private, are responsible for the failure of States to comply with an international obligation. The responsibility of the State for violation of international obligations enshrined in the Convention aimed at preventing and combating acts of unlawful interference with civil aviation safety should be determined by Ukraine in national criminal legislation. As a result, it is essential to mark that Ukrainian legislation transformed the principle of aviation security, which was recognized by the Convention on International Civil Aviation of 1944, and concludes bilateral international agreements on air traffic for its development. By relying on such agreements, Ukraine agreed to be responsible for compliance with international legal obligations to ensure aviation security to the United States and to enshrine in national legislation that acts violating the principle of aviation security are a criminal offense. Therefore, it can be reduced to the thesis that Ukraine is responsible to the person for the introduction of law and order under which acts violating civil aviation safety were recognized as crimes and prosecuted.

6. Ukraine, state authorities, and state aviation enterprises as liable parties

We have already mentioned above that Ukraine has complete and exclusive sovereignty over the airspace within its territory, which, according to Article 1 of the Convention on International Civil Aviation of 1944, provides for the prohibition of the use of Ukrainian airspace without its consent. Article 13 of the Constitution of Ukraine logically corresponds to the above provision, which enshrines that the atmospheric air within the territory of Ukraine is the object of property rights

of the Ukrainian people. Ownership rights on behalf of the Ukrainian people are exercised by bodies of state power and bodies of local self-government within the limits determined by this Constitution. According to part 2 of Article 19 of the Constitution of Ukraine, bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine. Moreover, according to Article 8 of the Constitution, the principle of the rule of law is recognised and effective in Ukraine. As a result of compliance with the above constitutional provisions, Part 2 of Article 3 of the Constitution stipulates human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State. Thus, it can be argued that Ukraine and state authorities, exercising the right of the Ukrainian people to airspace over the territory of Ukraine, are obliged to act in the interests and with respect for human rights and bear responsibility for non-compliance with specific constitutional norms.

Such a conclusion, in particular, is confirmed by the Law of Ukraine "On Transport" No. 232/94-BP dated November 10, 1994. Article 3 of the law establishes that the purpose and task of public management in the field of transport is to protect the rights of citizens while receiving transport services and the safe functioning of transport. Public management of transport activities is carried out through the implementation of economic (tax, financial, credit, tariff, and investment) and social policies, including subsidies for passenger transportation. Therefore, Ukraine fulfils the exclusive functions of public administration in the field of aviation transport (tax, financial, tariff, and control functions) and can act as an investment entity, in particular, act as an actor of enterprises engaged in aviation and transport activities. The implementation of the state policy on transport is carried out through the central executive body, which ensures the formation and administration of the state policy on transport – the Ministry of Infrastructure of Ukraine. Accordingly, the activities of Ukraine, as a state in the field of aviation transport, are divided into ones that purely derive from the exercise of power – legislative and administrative management of civil aviation, and activities that derive from power but have a purely economic effect, in particular, investment and establishment of aviation enterprises that are participants in commercial relations.

Notwithstanding the fact that Law No. 232/94-VR does not contain a well-formulated statement that public authorities are responsible to a person for violating their rights. However, this follows from the interpretation of the provisions of part 2 of Article 3 of the Constitution of Ukraine in a logical connection with Article 3 of Law No. 232/94-VR, which regulates that the purpose and task of public administration in the field of transport is to protect the rights of citizens when receiving transport services and the safe functioning of transport. The logical consequence of non-fulfillment of such obligations by a public body, which has led to violation of human rights, will be the occurrence of responsibility for the state and the public authority in the form of compensation for material and moral damages inflicted by unlawful decisions, actions or omission, as provided for in Article 56 of the Constitution of Ukraine.

Another aspect of the activities of state authorities in the aviation industry is investment, which, in accordance with the Law of Ukraine "On Investment Activity" No. 1560-XII as of September 18, 1991, enshrines that state investment is carried out by public authorities at the expense of the state budget in investment objects, in particular property rights in aviation enterprises. In turn, Article 16 of Law No. 1560-XII stipulates that transport enterprises are obliged to ensure the safety of life and health of citizens, the safety of aircraft operation, environmental protection, and Article 14 of this Law stipulates that transport enterprises ensure the safety of goods and luggage from the time they are accepted for transportation and until they are issued to recipients, unless otherwise provided by the contract. Therefore, it follows from the legislation that aviation enterprises established with the participation of the state are responsible for the safety of persons and the preservation of private property handed over for transportation.

Having studied the above provisions of the legislation of Ukraine, it is possible to conclude that in terms of transport, in particular air transport, Ukraine exercises the powers of the people of Ukraine to manage airspace over the territory of Ukraine in two main aspects: exclusively the implementation of public power – statutory regulation and control over the use of airspace for air traffic; exercise of authority – disposal of state property (budget funds) and investment in aviation enterprises that carry out commercial activities. And accordingly, aviation enterprises are responsible for non-compliance with legislative provisions on ensuring human transport safety and for violation of luggage storage during transportation. Consequently, Ukraine, state authorities

and aviation enterprises based on state property are liable to a person under the current legislation of Ukraine, in particular, the Constitution of Ukraine, the Law of Ukraine “On Transport” No. 232/94-VR dated November 10, 1994, the Law of Ukraine “On Investment Activity” No. 1560-XII dated September 18, 1991, special laws, provisions of the Air Code of Ukraine and the Civil Code of Ukraine, which we will consider below.

7. Public law foundations of the state responsibility concept under Ukrainian air law

Ukraine, exercising the right to complete and exclusive sovereignty over the airspace, which is part of its territory, adopted the Air Code of Ukraine as of May 19, 2011, No. 3393-VI, which regulated aviation activities and the procedure for using the airspace of Ukraine. The relevant activity of Ukraine is aimed at ensuring aviation safety. In accordance with Article 4 of the Air Code, Ukraine has acceded to the Convention on International Civil Aviation of 1944, and therefore is responsible for fulfilling international obligations arising from this Convention, and for guaranteeing and creating safe conditions for society, protecting interests during civil aviation activities and using Ukrainian airspace. From the above provision of the Air Code, it is evident that Ukraine, as a subject of international law, bears international legal responsibility for compliance with international obligations arising from the principle of ensuring civil aviation (in the aspect of flight safety and aviation security), which is fundamental in international air law (Malovatskyi, 2018, pp. 66–80) and for creating safe conditions for society during the use of airspace. Confirmation of this statement is found in the Law of Ukraine “On the State Program of Aviation Security of Civil Aviation” No. 1965-VIII as of March 21, 2017, which enshrined mandatory measures for ensuring the safety of civil aviation and protecting international civil aviation from unlawful interference, the Aviation Security Manual (Doc 8973), as well as other international acts and acts of Ukrainian legislation.

The Air Code specifies that the airspace of Ukraine can be used not only for the purposes of air traffic but also for state aviation to maintain national security and defense of the state and protection of the population, which are entrusted to the Armed Forces of Ukraine (paragraph three of part 4 of Article 4 of the Air Code of Ukraine). In other words, in addition to state regulation of airspace use for commercial transportation, Ukraine can use the airspace for state defense and protection of the population. The relevant issue is poorly studied and will be covered in an individual article. Hence, it can

be argued that in case of Ukraine’s violation of the obligation to ensure security, it will be responsible to a person.

Specification of Ukraine’s responsibility to a person is set out in Section XVIII of the Air Code “Liability for violation of civil aviation legislation”. In particular, Article 126 of the Air Code states that legal entities and individuals whose activities are related to the use of the airspace of Ukraine, development, manufacture, repair and operation of aviation equipment, implementation of economic activities in civil aviation, air traffic services, and aviation security are liable for unlawful actions under the law.

The above provisions do not indicate that Ukraine, as a State, is responsible for violating law and committing a civil aviation offense. However, this is probably justified due to the fact that the State is an organization of public power, which is represented by public authorities exercising the powers of the State (Kozubra, 2015, pp.103) based on state sovereignty, which legitimizes such powers (Bukhanevych, O.M., Ivanovska, A.M. & Kyrilenko, V.A. 2022, pp. 84–93). In particular, the Ukrainian science of law has a strong legal tradition of separating the responsibility of the State and officials who are empowered on its behalf to exercise power (Onishchenko, 2009), and when it comes to the State’s criminal responsibility, it is represented by officials (Vazhna 2019, pp. 129–140).

Such our assumptions are supported by the norms of Article 126 of the Constitution of Ukraine which marks that if an offense committed by state authorities or an aviation enterprise, they are liable. In our opinion, such liability is administrative, which is proved by Article 127 of the Air Code of Ukraine, Article 111-112 of the Code of Ukraine on Administrative Offenses, which provides for liability for violation of flight rules; criminal, which is stipulated by Articles 269, 276, 278, 280, 281 of the Criminal Code of Ukraine, in particular, Article 276 of the CCU “Violation of traffic safety rules or operation of railway, water or air transport” and Article 281 of the CCU “Violation of air flight rules”; disciplinary liability, which may occur for non-fulfillment or improper fulfillment of official duties by civil servants, which is provided for in Section 2 “Principles of disciplinary liability” of the Law of Ukraine “On Civil Service” No. 889-VIII as of 10.12.2015; or civil liability, which is provided for in the Civil Code of Ukraine and discussed below.

Having studied the public law fundamentals of the concept of Ukraine’s responsibility in legislation, it should be noted that Ukraine as a State is responsible for compliance with its international obligations arising from the Convention on International Civil Aviation of 1944

to other states, in particular for compliance with the principle of civil aviation safety. National air legislation transformed Ukraine's obligations under the 1944 Convention on International Civil Aviation to the Air Code of Ukraine, which enshrined its obligation to regulate, control and use its sovereign airspace in a safe way for a person. In turn, it is established that officials (civil servants) are responsible for violation of the safe use of airspace, if such acts constitute an offense, under the Criminal Code of Ukraine, the Air Code of Ukraine, the Code of Administrative Offenses of Ukraine, the Law of Ukraine "On Civil Service", and the Civil Code of Ukraine.

8. Private law foundations of the state responsibility concept under Ukrainian air law

The fundamentals of the private legal concept of Ukraine's responsibility under air law are laid down in the Constitution of Ukraine and derive from the principle of state responsibility for its activities before a person. As mentioned above, Ukraine within the sovereign airspace has the exclusive power to adopt laws and accordingly regulate the use of airspace. In addition, part 3 of Article 152 of the Constitution of Ukraine provides that laws and other legal acts, or their separate provisions, that are deemed to be unconstitutional, lose legal force from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality. Article 56 of the Constitution of Ukraine also stipulates that everyone has the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority. Following the above provisions, it is reasonable to argue that if Ukraine has not complied with its obligations to ensure safe use of the airspace and such a violation was committed by adopting an unconstitutional act or committing a violation of the law by a public authority and these actions caused damage to a person, Ukraine or a public authority is obliged to bear responsibility in the form of compensation for damage. The term of harm, methods of its determination, and measures to be taken to compensate for it are enshrined in the Civil Code of Ukraine No. 435-IV as of 16.10.2003 (hereinafter referred to as the CC). In particular, Chapter 82 of the CC fixes the general grounds for civil liability. Article 1175 of the CC provides that the damage caused to an individual via the adoption by a public authority of a normative legal act that has been declared unlawful and annulled is compensated by the state,

regardless of the fault of officials of such bodies. Article 1173 of the CC establishes that damage caused to an individual by unlawful decisions, actions or omissions of a public authority, in the exercise of their powers, shall be compensated by the state or a local self-government body, regardless of the fault of such bodies. Article 1174 of the CC also stipulates that damage caused to an individual by unlawful decisions, actions or omissions of an official of a public authority, in the exercise of their powers, shall be compensated by the state, regardless of the fault of that person. In our opinion, the provisions of Article 1177 of the CC, which established that damage caused to an individual who has suffered from a criminal offense is compensated under the law or at the expense of the State Budget of Ukraine in cases and in the manner prescribed by law, have become particularly relevant. It follows from the above that if Ukraine, a state body, or an official violates human rights (commits an offense or a crime) and causes harm to a person by such actions, Ukraine is obliged to compensate for the damage regardless of the presence of guilt.

Damage, according to Articles 22 and 23 of the CC, is *material damage*, which is understood as losses suffered by a person due to the destruction or damage of a thing, as well as expenses that a person has incurred or must incur to restore their violated right (real damage) and lost profit; *moral damage* is inflicted physical pain and suffering, mental suffering, humiliation of honor and dignity of an individual. By relying on the above articles, it is seen that, as a general rule, material damage (losses) and moral damage are compensated in full, in the form of payment of funds.

Having previously summarized the above, it can be concluded that if Ukraine, a public authority, or an official violates the provisions of the current air legislation ensuing in violation of human rights, the state will bear civil liability for such unlawful actions. In other words, if the state commits an offense from which guilt is excluded, then it will be liable.

At the same time, civil law contains the responsibility for actions that do not constitute an offense: it occurs for actions not prohibited by law but for harmful or risky actions – using a source of increased danger. In particular, Article 1187 of the CC provides that damage caused by a source of increased danger is compensated by a person who owns a vehicle, the use of which creates increased danger. A person who carries out activities that are a source of increased danger shall be liable for damage caused, unless he/she proves that the damage was caused due to force majeure or intent of the person affected. Since the aircraft

is undoubtedly an object of increased danger, the State using such an object is responsible to the person for causing damage. In addition, Ukraine has consented to be bound by the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed in Rome on 7 October 1952, which specifies the mechanism and extent of State liability if it operates an aircraft which, as a result of its accident, has caused damage to human rights. As well as the current Civil Code of Ukraine, the responsibility of the State under this Convention is the obligation to compensate for damage through the payment of funds.

Another type of liability that is usually separated in civil law is contractual liability or, as some scholars suggest “liability and other consequences of failure to fulfill civil obligations” (Dzera, O.V., Velykanova, M.M. & Bilenko, M.S. 2022. pp. 106–115).

Thus, part 18 of Article 100 of the Air Code of Ukraine provides that the provisions of the Civil Code of Ukraine that air transportation contracts, including charter transportation and other civil law relations related to air transportation that are not regulated by the provisions of this Code or international treaties of Ukraine, shall be subject to the Civil Code of Ukraine. As stipulated by Article 908 of the CC, the carriage of cargo, passengers, baggage, and mail is conducted under a contract of carriage. Responsibility for violation of the contract, delay in transportation, damage, or loss of baggage and cargo, as well as for causing injury and death of a person is determined following the provisions of Articles 920-928 of the CC. Also, in the case of international air transportation, Ukraine recognized the force of the Convention on the Unification of Certain Rules for International Air Transport of 1999, which supplements the Civil Code of Ukraine with norms on the carrier’s liability and the limits of monetary compensation for damage caused in the form of payment of funds.

Having examined the private law fundamentals of state liability under air law, it is possible to conclude that Ukraine, following current air law, is liable if it commits, in the person of state authorities or officials, an offense from which the subjective aspect of the offense is excluded – guilt. The consequence in civil law is tort liability, which involves compensation for the damage caused, i.e., payment of funds. Ukraine is also responsible for causing harm to a person by high-risk objects – an aircraft, and for violating an air transportation contract. Moreover, tort liability and contractual liability in air law are specified in international treaties concluded by Ukraine.

9. Conclusions

As a result, having analyzed the concept of state responsibility to a person under the air law of Ukraine, it can be said that fundamentals of the concept of state responsibility are laid in a universal international treaty – the Convention on International Civil Aviation of 1944. The central pillar of the responsibility of the State is the recognition of its full and exclusive sovereignty over the airspace over the state territory, which, on the one hand, vest the State with exclusive powers to regulate the airspace use but in such a way as to ensure flight safety and aviation security and the safe use of aviation for persons. Ukraine recognized that the obligation to ensure the safe use of airspace is mandatory for through implementing bilateral international agreements on air traffic, in particular the 2015 Air Traffic Agreement between the US Government and the Government of Ukraine. Ukraine, in turn, by relying on the Constitution, recognized that it acts to ensure the rights and interests of a person and is responsible to a person for violating his or her rights. Thus, we can conclude that if Ukraine violates its international flight safety obligations, which will harm a person, then, depending on the consequences for a person, it will be liable in accordance with the norms of current international law: the Vienna Convention on the Law of Treaties of 1969, the European Convention for the Protection of Rights and Fundamental Freedoms of 1952, the Constitution of Ukraine, the Law of Ukraine “On Transport”, and the Air and Civil Codes, which will take the form of compensation for moral and material damage, i.e., the payment of funds. An individual type of civil liability will be borne by the State for violation of contracts for the international carriage of passengers by air under the provisions of the Convention for the Unification of Certain Rules for International Carriage by Air of 1999 and for damage caused by non-contractual relations on the basis of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface of 1952. Hence, if violations of the principle of ensuring the safe use of the airspace are committed by public authorities or officials, exercising their powers, they bear criminal, administrative, disciplinary, and civil liability in accordance with the norms of the current legislation of Ukraine. Therefore, it should be emphasized that the concept of state responsibility under the air law of Ukraine is based on the norms of international and national law, as well as the norms of public and private law, which confirms the theses that air law covers the norms of various law branches, and their interaction on the regulation of legal relations constitutes particular complexity and needs further research.

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КОНЦЕПЦІЯ ВІДПОВІДАЛЬНОСТІ ДЕРЖАВИ ПЕРЕД ЛЮДИНОЮ В ПОВІТРЯНОМУ ПРАВІ УКРАЇНИ

Анотація. Ця стаття має на меті дослідження правового регулювання відповідальності України в повітряному праві перед людиною. Завданням цієї статті є визначення підвалин відповідальності України перед людиною у національному повітряному праві. **Методи дослідження.** У статті використано логічний метод пізнання, метод порівняльного аналізу та метод теоретичного дослідження. Новим є комплексна спроба визначити правові передумови (правові підстави, фактичні підстави та умови відповідальності держави) на підставі норм міжнародного права та національного законодавства, зокрема публічного та приватного права. Це дослідження ґрунтується на критичному аналізі норм міжнародного повітряного права та норм сучасного національного права України та практики застосування права. У **результаті дослідження** були зроблені **висновки** про те, що основи концепції відповідальності України закладені в універсальному міжнародному договорі – Конвенції про міжнародну цивільну авіацію 1944 року. Центральною підвалиною відповідальності держави є визнання за державою повного та виключного суверенітету та забезпечення безпечного використання повітряного простору. Україна визнала обов'язок забезпечення безпеки польотів, а відповідно є відповідальною перед людиною за безпечне використання суверенного повітряного простору для цілей авіації, що також підтверджено конституційним обов'язком України забезпечувати права і свободи людини. У випадку порушення такого зобов'язання та завдання шкоди людині, Україна буде нести юридичну відповідальність згідно норм Європейської конвенції про захист прав і основоположних свобод 1952 року, Конституції України, Закону України «Про транспорт», Повітряного та Цивільного кодексу, що буде мати форму відшкодування моральної та матеріальної шкоди, у формі сплати грошових коштів. За завдання шкоди людині Україна буде нести цивільну відповідальність за Конвенцією про уніфікацію деяких правил міжнародних повітряних перевезень 1999 року та Конвенцією про шкоду, завдану іноземним повітряним судном третім особам на поверхні 1952 року. Якщо порушення принципу забезпечення безпечного використання повітряного простору допустять органи державної влади чи посадові особи, вони будуть піддані кримінальній, адміністративній, дисциплінарній та цивільній відповідальності.

Ключові слова: особа, держава, відповідальність, повітряне право, міжнародно-правова відповідальність, Україна.

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