

**POSSIBLE DAMAGES FOR VICTIMS OF THE AIR DISASTER OF FLIGHT
GERMANWINGS/ LUFTHANSA n°4U9525 OF MARCH 24TH 2015**

The air disaster of GERMANYWINGS flight n° 9U9525 Barcelona-Düsseldorf, which occurred on March 24th 2015 in the Alps of Haute Provence, caused 150 victims of 18 different nationalities, all of whom were aboard the Airbus A320 plane.

Amongst these were 70 Germans, 50 Spaniards, 3 English, 1 Belgian, 1 Danish, 1 Dutch, 3 Argentinians, 2 Columbians, 2 Mexicans, 2 Venezuelans, 1 Chilean, 2 Americans, 2 Australians, 2 Japanese, 3 Kazakhs, 2 Iranians, 1 Israeli, 2 Moroccans.

Analysis of the black box with sound recordings of the pilot's cabin reveals that the co-pilot was alone in the cabin and had locked the access door before disconnecting the autopilot in order to proceed to the descent of the aircraft in the middle of mountains.

Because damages will be treated differently depending on the place, the circumstances and the entities/persons liable for the accident, it is important that the public call upon attorneys specialized in the defense of victims of aircraft accidents, as their experience will be essential in setting a negotiation strategy with those responsible for the accident and their insurers, in order to obtain the highest indemnification for the victim's families.

The onus is ultimately on insurance and reinsurance companies that insure flight companies and aircraft manufacturers to pay the damages set by tribunals.

In practice, these insurance companies will seek an amicable settlement with the right-holders of the victims, in light of the risk of conviction their clients face. This risk is generally determined by the economic and moral harms suffered by the right-holders of the victims, as well as moral damages of the victims themselves, if this right is acquired before their passing.

The Montreal Convention of May 28th 1999 institutes an objective no fault liability capped at 113 100 SDR or 132 688 euros. However, when it is established that the accident is due to the air carrier's fault, damages are no longer capped.

In the present case, the circumstances of the suicidal and criminal act of the co-pilot are established and they constitute a fault by the air carrier, who is liable for its employees.

To this liability for the handling of the airplane, we could add the faults resulting from lack of precautions with respect to the requirements generally applied by airline companies that 2 people be present at all times in the cockpit, as well as to the automatic locking of the cabin's access door.

When an accident occurs with an airline company of a poorer country, damages to which those liable for the accident are sentenced are often limited, in the absence of fault, to the small capped sum of 132 688 € of the Montreal Convention.

On the other hand, if the case of the accident is likely to be brought in front of an American court, the order to pay damages may vary between 1 Million to 4 Million US \$. For this reason, to protect themselves from the risk of a higher award insurers will offer a lot more than 132 688 € as settlement money.

This may also occur when, in light of flagrancy of its faults and the urgency to preserve its reputation, the airline company and its insurer agree to proceed to a fair and prompt indemnification of victims.

We can therefore note the importance of understanding the circumstances of the accident in order to evaluate the potential liability of the various actors and assess the strategy that will be better suited to preserve the victims' interests.

Generally, it is in the USA that we can obtain higher damages. This is explained by the efficiency of the American Common Law system with regards establishing evidence (the discovery system) as well as the fact juries decide on liability and the amount of damages, and they are usually more generous than professional judges in tribunals of civil law jurisdictions. American case law shows that damages they award are 4 times higher than the highest amount granted in France.

In order to seize a court however, it must have jurisdiction according to international and national rules. The Montreal Convention of May 28th 1999 states that courts having jurisdiction to hear air crash cases are namely:

- Courts in the country where the transporter is domiciled (Germany),
- Courts of its main place of activity (Germany),
- Courts of the place where it possesses an establishment through which the contract was concluded (to be verified in each country in which the passengers bought their tickets),
- Courts of the place of destination (Germany),
- Courts of a country where a passenger had his/her permanent and principal residence at the time of the accident (in this case, the 18 countries where the passengers resided).

In this case, jurisdictional rules essentially point to Germany since the airline company is German and the destination of the trip was Germany.

Spanish tribunals are also competent, as it is the place where the contract of carriage was concluded, as well as the country of permanent and principal residency of the numerous Spanish victims. The tribunals of the 18 concerned countries will also be competent regarding the victims that have their permanent residency there.

To these grounds for jurisdiction, we can add jurisdiction of the country of the head office of the manufacturer of the Airbus A320 plane, in case an action on grounds of manufacturing defect of the aircraft is brought, an action that not necessarily brought in front of a jurisdiction designated by the Montreal Convention, which applies to carriers.

The company AIRBUS SAS, incorporated under French law, is part of a European consortium EADS having many head offices in Europe, and owning various subsidiaries in France, Germany, Spain, and in Great Britain, as well as 12 European manufacturing sites. As a consequence, a civil liability action against Airbus may be brought in front of various European tribunals.

American tribunals could also have jurisdiction on the one hand in regards to the 2 American victims, and on the other hand in regards to the potential liability of an American supplier of the AIRBUS.

However, because a greater number of criteria link this case to Germany, American courts having jurisdiction may refuse to hear the matter in the name of the "forum non conveniens"

principle, which allows a court to forfeit its jurisdiction to the benefit of another, in the name of good administration of justice.

For the reasons stated above, it is necessary to evaluate the strategy for defending the interests of the victims' families by conserving the possibility to engage an action in various jurisdiction for as long as possible. The time limitation to commence liability action against the airline company is 2 years.

Because of the multiplicity of the victims' nationalities, the important consequence of this catastrophe on the reputation of the airline companies GERMANWINGS and Lufthansa, on the reputation of the Airbus company, as well as the influence of American jurisprudence in regards to damages, we believe that the damages that may be granted will be highly superior to the 132 688 € provided for in the Montreal Convention; According to us, it will be at a minimum around 1 500 000 \$.

We can bet that LUFTHANSA will offer a generous indemnification in light of the magnitude of its liability in this tragedy, which was rapidly revealed by investigations and analysis of the recordings on board.