

Legal Protection for the Passenger in the Field of Air Transport

Riyadh Nadhim Hameed Al-Doori¹, Ali Abbas Rafea²

Corresponding Email: Riyadh.n83@tu.edu.iq

¹College of Political Science - University of Tikrit –Iraq

²University of Anbar – Iraq

Abstract

Through this study, we are trying to address the most important features of the air transport contract in terms of the legal protection for the traveler and what internal laws adopted in the wake of international agreements that focused on that protection, in accordance with the importance the air transport contract represents in contemporary times and the fast, easy and safe alternative it has become to land and sea transport. We divided that study into two sections. In the first section, we addressed the incidents that could occur during the implementation of an air transport contract, whether air accidents or air piracy operations. In the second section, we discussed the legal protection of the traveler in the field of air transport and the liability resulting from breaching it, and we explained the legal protection in Internal laws and the search, rescue and investigation carried out by the competent local authorities in air accidents and their consequences on the traveler's right to compensation when an accident or imminent danger occurs, as well as a statement of the legal liability resulting from a breach of the traveler's legal protection in the field of air transport from By explaining the nature and types of this responsibility, we concluded the research with some conclusions and proposals, trying as much as possible to become familiar with the subject of the study. We hope that the Iraqi legal development in air transport will follow the lines of the legislation that surrounds us, in line with the technical and technical development of means of transport and the importance and volume of trade represented by air transport and reliance on it in all matters. Continents of the world today.

Keywords: Transportation, Air, Liability, Legal, Compensation

Received: August 9, 2023

Revised: September 5, 2023

Accepted: September 16, 2023

Introduction

Air transport represents the most important form of exploitation of air space. The story of man with aviation is an illustration of the struggle he experiences with the forces of nature. He had a dream of imitating birds in their flight, and after bitter struggle and sacrifices, he was able to roam air space using vehicles with high speed and capable of carrying heavy loads. In fact, it transcended the atmosphere to enter the field of outer space exploration. However, this exploitation of airspace was accompanied by some mistakes that represented an introduction to the necessity of providing legal protection to the traveler in the field of air transport.

The problem of the study: The main research problem is the presence of a clear legislative vacuum that regulates the legal protection of the traveler in the field of air transport, as our Iraqi legislator did not adopt the objective theory regarding the responsibility of the air carrier, in addition to the position of the Civil Aviation Law, which was missing many provisions related to air carriers. Aviation, especially civil aviation.

Methods

The researcher followed in his study the by describing and analyzing the legal texts contained in the Iraqi Transport Law No. 80 of 1983 in force and the Aviation Law No. 148 of 1974 in force, as well as analyzing the legal texts contained in the Iraqi laws in force that address issues not regulated in air transport agreements (such as refusal to board, Flight cancellation, flight delay).

The researcher also relied on the comparative legal approach by comparing with some legislations to find out the similarities and differences between the Iraqi legislation and the comparative legislations, and what our Iraqi legislator can benefit from other legislations to fill the legislative shortage in the field of air transport protection, in addition to the necessary judicial applications in this field.

Sixth - the structure of the study: divided this research into two researches, in the first we dealt with the risks to the passenger in the field of Air Transport, and in the second we showed the legal protection of the passenger in the field of Air Transport and the liability resulting from violation thereof, and we concluded the research with some important conclusions and proposals as follows.

Risks to the passenger in the field of air transport

The air transport industry plays a major role in the global economy, and with the expected significant growth in air traffic in the future, planning for aviation safety at the international, regional and national levels becomes necessary to regulate this growth in a safe and effective manner, taking into account legal responsibility, as air transport has an important impact on The aircraft industry flourishes in accordance with the obligations of the Civil Aviation Law and air transport agreements, which require providing adequate reassurance to the passenger and the carrier, but what affects this is the dangers and air accidents that occur to the traveler (Rahim & Tharwat, 1966)).

Air accidents and piracy are among the risks to which the air traveler is exposed and from which the carrier must protect him. These are what we will discuss in two topics, in the following order:

Air accidents

Since serious attempts at aviation began in the late nineteenth century, and after the importance of the aircraft in shaping the future of transportation in the world became clear, those interested took two paths: Both of them aim to achieve the greatest possible degree of air safety, and the first path is to develop the technical aspects of aircraft. Accordingly, engines developed from regular to jet, and navigation tools and communications devices were invented, which began with wireless and reached the era of satellites, and devices arrived. Radar and weather forecasts are at the highest technical levels, and the comforts inside the aircraft are still improving day after day. The second path is the legal path, which is the focus of our research. Air laws began to appear nationally and internationally with the beginning of the aircraft industry, and it was necessary for them to keep pace with technical developments. It sets the rules that must be followed to protect aviation and reduce its danger. The international community has succeeded in developing agreements that frame public international law and achieve a great deal of air safety. These are the ones on which different countries build their general national laws in aviation, and on the basis of that, a flight may be exposed. For many risks from which the air traveler must be insured, and with regard to the position of our Iraqi legislator, Article 1 of the Iraqi Civil Aviation Law No. 148 of 1974 stipulates that accidents are defined as: "Aviation

accident - every incident related to the operation of the aircraft that occurs from the time any person boards the aircraft." With the intention of flying until such time as all such persons have left the aircraft and during which: (A) Any person is seriously injured or dies as a result of being on board the aircraft or his direct contact with it or anything installed in it. (B) -(the aircraft was seriously damaged).

As for the Egyptian legislator, in Article 1 of the Egyptian Civil Aviation Law, he defined an aviation accident as: "Every accident that results in one of the consequences referred to below, is related to the operation of the aircraft and occurs in the period between the time when any person boards the aircraft with the intention of flying until The time when all persons have left the aircraft; (1) the death or serious injury of any person as a result of being on board the aircraft or direct contact with it or with anything installed in it; (2) The aircraft suffered a serious malfunction; (3) this excludes serious or fatal injuries that do not directly result from the operation of the aircraft, namely; (1) Death from natural causes; (2) Self-inflicted injuries.; (3) Injuries caused by other persons; (4) Injuries of persons entering the aircraft outside the passenger compartment. (5) Injury to ground personnel before or after the flight of the aircraft".

As for the position of comparative legislation, the Qatari Civil Aviation Law, in its last amendment pursuant to Law No. 15 of 2018, defined in Article No. (1) thereof "an aviation accident as: an incident related to the operation of an aircraft, occurring in the case of an aircraft flown by a pilot at any time since the boarding of any aircraft." Person of the aircraft with the intention of flying until all these persons have disembarked from the aircraft, or in the case of an aircraft flying without a pilot, at any time when the aircraft is ready to move for the purpose of flight until it stops at the end of the flight and the basic propulsion system is closed. By referring to the special texts in air accidents It is divided into the following paragraphs:

First - any person is fatally or seriously injured, and in order for the description of the air accident to apply to him, the following condition must (Haddad, 2005): (a) Presence on the plane; (b) Direct friction with any part of the aircraft, including any part that separates from it; (c) Direct exposure to jet engine exhaust.

An exception to this is injuries resulting from natural causes, or those caused by a person to himself or caused by other people, or when injuries occur to an intruding passenger hiding in a place other than the places normally available to passengers or members of the aircraft crew (Ya Malki, 1998).

Second- The aircraft suffers damage or a structural defect that would adversely affect the strength of the aircraft's structure, performance, or flight characteristics, and usually requires major repairs or replacement of the damaged part : This excludes cases of engine failure or damage, and the damage is limited to a single engine, including its covers or accessories, propellers, wingtips, vents, probes, wind turbines, tires, brakes, wheels, or Leaks, panels, landing gear gates, windshields, or the exterior of the aircraft such as small scratches or holes, minor damage to the main rotor blades, tail rotor blades, or landing gear, and damage resulting from light hail Or birds hitting the plane, including holes in the radome (Fahim, 1986).

Third -loss of the aircraft or its complete inaccessibility" : This paragraph was adopted by the Iraqi legislator, who stated that an incident is: "Any incident, other than an accident, related to the operation of an aircraft and affects or could affect the safety of operation," and a dangerous incident is: "An incident whose circumstances indicate that there is a significant risk of an incident occurring related to operating an aircraft, occurring in the case of a manned aircraft at any time from when any person boards the aircraft with the intention of flying until all such persons disembark from the aircraft, or in the case of an unmanned aircraft occurring at any

time when the aircraft is prepared to move for the purpose of flight until stopping at the end The flight and the main payment system are closed".

As for judicial applications, what the judiciary in France went to, where it ruled in a case whose facts boiled down to the hijacking of a plane. That hijacking harmed the passengers, so a person named (Zagan) claimed compensation from the carrier. The carrier company argued that the hijacking was not considered an accident in accordance with what was stated in Article 17 of the Warsaw Convention (Weigand, 2001). but the French court of Cassation The ruling that an accident is anything that disrupts the normal course of an Air flight, even if it is caused by the intervention of a third party, is a clear endorsement, as some jurisprudence goes to the definition of an accident in the Montreal Convention of 1966, which considers that the accident may result from the transportation process itself or from an external factor related to transportation (Abdullah, 2017).

As for the Iraqi judicial applications, we find that there is a dearth of judicial applications, we find that a decision of the Basra District Court, according to which it ruled to oblige the Iraqi Airways Company to pay compensation in the amount of one million two hundred and fifty thousand dinars each for the material and moral damages suffered by the traveler with his child, as a result of the delay that occurred on the numbered flight (149 The flight was scheduled to start at exactly six o'clock in the evening on 16/7/2018, and its destination is from Basra International Airport to Mashhad International Airport, but the start date of the flight has exceeded the original time set for it due to the absence of the captain of the plane to the airport, and after more than an hour The passengers were invited to go and board the plane and sit on the seats assigned to them, but they were surprised to be informed that the plane would be diverted and heading towards Baghdad International Airport for the passengers of another group of passengers on board and then heading to Mashhad International Airport, after which the plane landed at Baghdad International Airport and the passengers were Based on the above, the court of first instance issued its ruling, which was based on the provisions of Articles (5, 9, first, 126 and 127) of the Iraqi Transport Law No. 80 of 1983, in which the carrier Iraqi Airways(Iraqi Airways Company) compensates the plaintiff passenger for the damage caused to him as a result of the delay that occurred to him due to the delay of take-off and the diversion of the flight route to another airport.

However, the Federal Court of Cassation has reversed the decision of the Basra District Court, explaining its reversal of the judgment on the following reasons; (1) The court of First Instance had to verify the reasons for the delay in taking off in the beginning; (2) Find out the reasons for changing the destination of the trip; (3) out the reasons for keeping the plaintiff and his son detained on the plane for more than an hour at Baghdad International Airport, and to use specialized experts in this regard.

The researcher believes that the decision of the distinguished Federal Court of Cassation has been wrong because the delay in the first case is not due to exceptional circumstances such as a security risk or weather conditions, but because the captain of the plane did not attend on time, and then the passengers are not supposed to bear the fault of the captain, in addition to The award of compensation was the most correct one, and the Honorable Court of Cassation should have ratified the decision to be a deterrent to airlines that do not respect the right of their customers.

The researcher summarizes the above: it is not enough just for the passenger to have an accident in order for the carrier to guarantee that accident during the air transportation process, but the accident must be a result of the transportation process itself, it is not conceivable to compensate for the passenger's heart attack or exposure to some disease during travel, no hands of the Here

the case is an accident related to the flight, but the carrier is not responsible for the aggression of passengers against each other during the flight, these are injuries outside the limits of the legal protection of the carrier for the passenger that This is achieved by the following; (1) Developing the global strategies contained in the global plan for air safety and the global plan for air navigation; (2) Development and maintenance of international rules and recommendations and procedures for air navigation services that apply to international civil aviation activities and supplemented with manuals and circulars that provide guidance materials on their implementation; (3) Monitoring safety trends and their indicators, ICAO audits the implementation of critical elements of the safety control system through the global air safety control audit program; (4) Implementation of targeted safety programs to address deficiencies in safety and infrastructure.

Air Piracy Operations

Air navigation was characterized by things that are not available in other means of transport, where speed and safety were guaranteed, but the increased demand for these means made it vulnerable to a range of criminal acts, which tried to harm it and made it vulnerable to sabotage, kidnapping and bombing, and the variety and multiplicity of crimes committed against aircraft, including the illegal seizure of aircraft (hijacking the plane), as well as air piracy, the bombing of aircraft, in addition to the encroachment on aircraft by means of advanced weapons, there were a set of factors that greatly helped the spread of Such crimes include political instability, as well as the weakness of the security services in developing countries, and the lack of joint international agreements aimed at the extradition of criminals (Al-Sahli, n.d).

Air piracy, as defined by Harvard College in 1932, is: "an act of looting or looting committed with the intent to steal from, Rob, injure, enslave, imprison, kill a person, or with the intent to steal or damage property for private purposes, and provided that such acts are carried out at sea, from, in the air, or from, provided that Piracy is defined in international conventions as: "an act of unlawful violence, seizure or looting if committed for private purposes and directed against another ship or aircraft, against its people or money, if the action takes place on the high seas or in a place that is not subject to the jurisdiction of any state(Harvard University, n.d), "Piracy is also defined in international agreements as: "an act of unlawful violence, seizure, or plunder if it is committed for private purposes and is directed against another ship or aircraft, against the people or property it is carrying, if the act takes place on the high seas or in a place not subject to jurisdiction of a state".

First-confronting piracy at the national level: legislator protects the right of ownership with a criminal legal provision that imposes a penalty on those who infringe that right, and those crimes affecting the right of ownership include the crime of air piracy, and in order to impose a penalty on the perpetrator of that crime, there must be public pillars, as in every crime, the first of which is the Article 354 of the Iraqi Penal Code stipulates that: "intentionally endangers in any way the safety of air or water navigation, the safety of a train, ship, plane or any means of public transport shall be punished by imprisonment. The penalty shall be life imprisonment if the ACT results in a train disaster or other of the above. The penalty shall be the death penalty or life imprisonment if this results in the death of a human , "as stated in Article (355) that; (1) Anyone who intentionally causes sabotage or damage to a public road, airport, bridge, bridge, railway, navigable river or canal shall be punished by imprisonment and a fine, or by one of these two penalties; (2) The penalty shall be life or temporary imprisonment if the perpetrator uses explosives or explosives in the commission of the crime; (3) The penalty shall be the death penalty or life imprisonment if this leads to a disaster or the death of a person.

The law also covered the wrong crime by stipulating in Article (156) that: "whoever mistakenly caused an accident to one of the land, water or air means of public transport that would disrupt its operation or endanger the people in it shall be punished with imprisonment and a fine or one of these two penalties.

The penalty shall be imprisonment for a term not exceeding seven years if the crime results in a catastrophe or death of a person.

However, if the crime is merely injury, the penalty varies to imprisonment for a period of less than three years, as Article (357) stipulates that: "causes by his fault an accident to one of the land, water or air means of public transport that disrupts its operation or endangers the persons in it shall be punished by imprisonment and a fine or one of these two penalties.

The penalty shall be imprisonment for a term not exceeding seven years if the crime results in a catastrophe or death of a person.

Article (358) punishes by imprisonment for a period of less than seven years anyone who disrupts the movement of ships, aircraft and public, land or air transport, and in Article (359) punishes by imprisonment anyone who endangers those means, including aircraft, by any means; the general sentence in all articles is death penalty for the death of a person, either if Death by mistake or negligence, the penalty is imprisonment according to the text of Article (357).

The researcher is clear from the legal articles regulating the crime of hijacking the plane in Iraqi law stipulate that the act must be positive until the material element of the crime is completed, as expressed by the Iraqi legislator by saying: "Kidnapping, restraining or detaining individuals", the act must be in the aircraft with the intention of hacking and kidnapping or detaining people, the act is not considered air piracy if it is for the purpose of stealing personal funds or the act is not directed towards the aircraft and an attempt to change its destination until the terrorist act is completed and falls outside the scope of internal criminalization in the said Penal Code by assaulting The crime was committed by a decree or a terrorist group that threatens civilian aircraft and works to hijack and hijack them, but in the event that the Completed Act of the crime was committed by one person, it will be prosecuted under national legislation.

First - countering piracy at the international level :according to the Warsaw Convention and the general conditions set by the World Aviation Organization, the crime of air piracy contains various risks, the first of which are: Direct material damage, including humanitarian damage and the human right to life, and material damage that falls on the traveler, they are compensated by airlines and insurance companies with the obligation to return them to their country, which may lead to spending millions and expose companies to bankruptcy, as there are damages that fall on the hijackers ' country, but the air transport contract is ultimately a contract between two parties They are the traveling passenger and the carrier or the airline, which makes it the right of the former to return to the carrier if it is impossible to fulfill the obligation to commit the crime of piracy and demand compensation and determine his responsibility for the delay or non-compliance with the transport dates, and the Warsaw Convention covered that incident, as it is likely We have a jurisprudence that went to consider every accident that harms the passenger in the concept of an accident contained in the Warsaw Convention, and which the two carriers bear responsibility for (Osman, 1983).

The Geneva Convention of 1958 dealt with the criminalization of acts of maritime and air piracy and Article XV of the convention provided for the criminalization of piracy and defined it as follows: the crime of hijacking aircraft and ships is an act of unlawful violence, detention

or any act of exposure, committed in order to achieve personal benefits against; (1) Aircraft or ship, or against persons or property on board the ship or aircraft; (2) An aircraft, ship, persons or property in a place outside the territorial borders of any country.

It is clear to us that the hijacking of aircraft includes any act of violence, detention, or any act of assault, or that the act is directed against persons or property on board the aircraft.

Legal protection of the passenger in the field of Air Transport and the liability arising from its violation

Air transportation is one of the most important ways to move across countries and continents, and the carrier or the carrier company that owns the aircraft is fully responsible for fulfilling its obligation to transport the passenger to and from the party that was contracted, and in the midst of this, the passenger or air passenger is exposed to many accidents, including at the airport, during the flight or after its completion, and we have seen the Iraqi law The law has also mentioned the dangers that may occur to the passenger from Air Accidents, piracy, kidnapping and robbery, which may result in the carrier taking precautions and taking measures to enable it to fulfill its obligation to the passenger easily and conveniently. The law has also mentioned the dangers that may occur to the passenger from Air Accidents, piracy, kidnapping and robbery, which may Aircraft and passengers are subject to the responsibility of the carrier in international agreements and internal laws, and in this discussion we present those in two requirements.

Legal protection of the passenger in the field of air transport

The protection provided under international treaties and agreements

Many international conventions have regulated the contract of air transport, including the Warsaw Convention of 1929, and besides that convention, there are many protocols, including The Hague protocol of 1955, which confirmed the existence of the presumed fault on the carrier's side (Al-Shami, 1990), however, this protocol has exceeded the Warsaw Convention for the carrier to require exemption from liability in case of loss of the goods or This protocol also mitigated the penalties imposed on the bad-faith carrier by limiting it to upholding the maximum amount of compensation and granted him the right to exemption from liability by proving that they had taken all safety measures in a victory for carriers over passengers(Rabdi, 2011).

Following the Montreal Convention of 1999, which provides in Article (17) that: "the carrier shall be liable for the damage that arises in the event of the death of the passenger or physical injury", and Article (21) of which establishes: "1. with respect to the damage provided for in Article (17), which does not exceed 100,000 SDR units for each passenger the carrier may not deny or limit its liability (Al-Arini & Mohammedin, 1998).

2-with regard to the damages provided for in Article (17), the amount of which exceeds 100,000 SDR units for each passenger, the carrier shall not be liable if it proves the following: a. That such damage did not arise from negligence, error or omission on the part of the carrier, its affiliates or agents. P. Or that such damage has actually arisen as a result of negligence, error or omission on the part of third parties".

The researcher finds out from the foregoing that according to the Warsaw Convention, three conditions are required for the carrier's liability, namely, that the breach of the safety guarantee arose from an accident; that the accident occurred in a certain period of time; and that it resulted in injury to the passenger, and in terms of determining the compensation required from the carrier, the Warsaw According to the text of Article (22) of the convention, compensation is an

effect resulting from the completion of contractual liability in the form of fault, damage and causation, which necessitates compensation for the damage under the general rules of domestic law.

Protection provided under internal laws and regulations

Iraqi law requires the carrier and airlines to adhere to several procedures and precautions to reduce accidents and risks during the flight, and the law imposes many measures when an event occurs, Article 140 is directed to the local authorities, stipulating that: "local authorities upon the occurrence of an aviation accident in their area of jurisdiction to immediately notify the civil aviation authorities and prevent take-off The aircraft, its parts and all its assets or debris and keep them as they are until the arrival of the representative of the civil aviation authorities".

The Iraqi legislator also defines the competencies he has given to the civil aviation authorities in Article (142), which states that: "Civil Aviation Authority is responsible for the formation of aviation accident investigation committees, and the number of members of the investigation committee must not be less than three except in minor accidents and May, at the request of the committee, use special expertise, whether they are from inside the country Or abroad to participate in the investigation in an advisory capacity and these authorities shall bear their expenses, relocation allowance and".

With regard to the jurisdiction in the investigation of air accidents, Iraqi law stipulates that: "court at the place of the accident is competent in cases arising from search and rescue and the state courts are competent in the mechanism of the accident on the high seas or in a place not subject to the sovereignty of any state, in the following cases: if the aircraft Registered in the state if the plaintiff is a national of the state, if the aircraft being searched for is located after the accident in the territory of the State" , " Also claims for compensation for damages caused by aircraft on the surface of the earth shall be filed either with the court where the accident occurred, the defendant's place of residence, or the principal place of his business, according to the plaintiff's choice. The injured party may file a lawsuit directly against the insurer or guarantor before the court of his domicile or the principal place of his business", The right to file claims for compensation for damage caused by aircraft to others on the surface of the Earth shall lapse after two years have passed from the date of the accident. In all cases, even in the event of suspension or interruption of the statute of limitations, these claims shall not be accepted after the expiry of three years from the date of the accident".

This is with regard to the obligations of the civil aviation authorities regarding accidents, as well as the investigation committees and judicial authorities. As for the carrier's responsibility, it is determined according to the general rules in contracts unless they relate to a special matter. As for civil liability for the air transport contract in the internal laws, the Iraqi Transport Law stipulated Article (10) stipulates that: "First - the carrier is responsible for the damages that befall the passenger during the implementation of the carriage contract. Any agreement that exempts the carrier, in whole or in part, from this responsibility is invalid. Second - the provisions of Paragraph (First) of this article apply to free carriage. When the carrier is a professional transporter and does not have a financial interest in it. Third - The implementation of the transport contract includes the period between the passenger embarking on boarding the means of transport at the place of departure and actually getting off of it at the place of arrival. Fourth - If there are locations prepared for stopping the means of transport, entry is not permitted. Usually for non-travelers, the implementation of the contract includes the period between the passenger entering those locations at the place of departure and leaving them at the place of arrival. Fifth - If it is necessary to change the means of transport on the way, the period of the passenger's transfer from one means of transport to another without guarding is

not included within the responsibility of the carrier. The carrier or his subordinates, as well as his wandering outside the place designated for rest, which the carrier designates. Sixth: The carrier's responsibility includes the actions of his subordinates related to transportation operations when they carry them out within the scope of their jobs. Every person employed by the carrier in carrying out the obligations resulting from the contract of carriage is considered a subordinate"(24), and this law declares that Iraq takes the Warsaw Convention of 1929 and the agreements attached to it and amended to it as its law", Thus, it makes the carrier's responsibility above what the law stipulates in terms of liability obligations that assume fault on the part of the carrier. According to that law, exemption is not permissible except in specific cases. It also requires the carrier to compensate, both materially and morally.

Therefore, the inevitable result that we come up with as a result of the enactment of various legislations and legal regulations is that these regulations should be known on the ground and make them valid to confer protection on their subject.

Legal liability for violation of the legal protection of the passenger in the field of international transport

Determining the provisions of liability of private airlines is an important issue, because air transport lines have become the nerve of movement between countries and even between parts of the same country, because of its speed and ease of movement, and of course, air transport is no longer limited to government airlines, but the private sector has a big role in this matter (Al-Mutairi, 2011), with this according to the following:

The nature of the responsibility arising in the field of international transport:

clear that the accountability of the airline is in the field of the contract concluded between it and the passenger, but it is necessary to know when the company has fulfilled its obligation, in fact, the answer to this matter requires determining the nature of the obligation of air carriers is Or is its obligation to achieve a goal, and that goal must be achieved so that it can be said that the airline has fulfilled its obligation (Aksasi, 2010), and therefore gets rid of liability in the following:

The obligation to achieve a result: the obligation to achieve a result is intended for the carrier's obligation to achieve a certain result, which is the arrival of the passenger and his luggage safely to the destination, and thus it is considered a breach of performance of its obligation if the passenger does not arrive on time or is injured as a result fit, is stated in the trade law that the carrier is responsible for all damage caused to the passenger during the execution of the contract of carriage and the condition stipulating otherwise is considered invalid (Ahmed, n.d), Similarly, with regard to the Iraqi transport law, it has stressed the responsibility of the air carrier and demanded that it exercise more caution and caution through the use of the appropriate mode of air transport in terms of its suitability for work and in terms of its efficiency, in addition, the legislator has made the carrier responsible for the actions of his subordinates whenever issued by them while performing their functions (Abu Zeid, 1994). While the Montreal Convention of 1999, which is considered to have the greatest credit for collecting the provisions of air transport, is no less important than the Warsaw Convention in unifying the rules of air transport, the Montreal Convention accompanied all the developments reached by previous conventions in the field of air transport, it established the rules of absolute liability, which is based on the idea of the carrier Regardless of the mistake made by him or one of his subordinates, although it came with similar provisions to previous agreements, such as the Warsaw Convention of 1929 and The Hague protocol of 1955, except that it differed from them in the issue of the basis of liability, in the above-mentioned agreements it set a

certain limit for compensation and made the liability Within the framework of this limit, liability is assumed, but if the damage exceeds the amount specified by these agreements, in order for the traveler to be entitled to additional compensation, he must prove the fault on the part of the carrier (Khair, 2001).

The obligation to exercise diligence: In the obligation to exercise diligence, the debtor is considered to have failed to implement his obligation if he does not exercise the necessary diligence in implementing his obligation, and the degree of diligence that the debtor exerts in the contract is the diligence of the average or usual man. Since the basis of the relationship between the passenger and the air transport company is the contract concluded between the two parties, it is assumed that the obligation of that company is their obligation to exercise appropriate care, which is the care of the usual man.

Second - Compensation: Compensation is one of the means of redressing the damage caused to the injured person. Compensation in general can either be compensation in kind or cash compensation, although the latter is predominant and common in the context of this type of liability, and it is naturally divided into two parts. The first part is Compensation for the material damage that befalls the injured person. The second type of compensation is compensation for moral damage, which is compensation for the damage that befalls a person in his emotions and feelings, and this is what we will discuss in the following; (1) To compensate for that satisfaction that would redress the damage caused to the passenger, whether in his body or in an element of his financial liability, perhaps this perception is taken by the Egyptian civil code in Article (221), which states "if the compensation is not estimated in the compensation includes the loss suffered by the creditor and the lost gain, provided that this is a natural result of non-fulfillment of the obligation or delay in fulfilling it, and the damage is considered a natural result if the creditor could not die with reasonable effort"

This is also what the Iraqi legislator stipulated in the Civil Code, Article (169) States: "1- if the compensation is not provided for in the contract or by a provision in the law, the court is the one that estimates it . 2- compensation shall be for each obligation arising from the contract ... It includes the loss of the creditor's right and the loss of his gain due to the loss of the right on him or due to the delay in fulfilling it, provided that this is a natural result of the debtor's failure to fulfill the obligation or his delay in fulfilling it". in particular, the Iraqi transport law provides for making the carrier liable for compensation for damages caused to the passenger by saying in Article (10) "1- The carrier is responsible for the damages that befall the passenger during the implementation of the carriage contract. Any agreement that exempts the carrier, wholly or partially, from this responsibility is invalid. This is also the case with regard to international agreements that also make the carrier, whatever the nature of this carrier, responsible for the damage that befalls the passenger, and this is stipulated in Articles (17 and 19); (2) Compensation for moral damage: With regard to the Iraqi transport law, a separate mention is found in Article X of it, which made the carrier liable for every damage caused to the passenger and did not distinguish between moral damage and material damage, as the text was absolutely general and at the same time provided for the Prohibition of any agreement of any kind that would determine the framework of that responsibility, and Perhaps, in launching this article, the legislator wanted to add some kind of protection to the passenger in the direction of the transport operators, especially at the last time he has the possibilities to make the passenger not negotiate in his terms, in other words, either take or Let, they are contracts not completely devoid of acquiescence and consent (33).

Conclusion

The Iraqi legislator has adopted the fault officer or element in all forms of error, which can be the starting point for civil liability of air carriers, although the adoption of this element may not achieve legal protection for the victim because of the difficulty of proving fault in many cases. We have not found in the aviation law in force any indication to determine the quality of damages that are being sought for compensation by air carriers, and no special rules have been developed in this regard and relied on the general rules, although the general rules in the civil code specified the quality of damages that can be compensated in tort and contractual liability. The Iraqi legislator did not take into account in the transport law and the civil aviation law strict liability in determining the liability of air carriers, the reason for this is that the Iraqi law did not take into account this type of liability, which is based on the element of damage only within the laws that regulated air transport, but the legislator took this theory within special laws as we pointed out in the research. Although the Iraqi legislature did not provide for the provision of delay in the transportation process or delay in arrival, similar to the international conventions that recognize the liability of the air carrier for the error of delay in arrival, but this is not a legislative deficiency because Article (126) of the Transport Law No. 80 of 1983 referred to the application of the provision of the Warsaw Convention, which included the provision of delay or delay in Arrival and obligated the carrier to compensate for this error. The carrier's obligation in air transport companies is of the nature of an obligation to achieve a result, whether within the carriage of goods or the carriage of persons. This is based on the principle of ensuring physical safety, which is considered one of the most important obligations of the carrier.

Suggestions

Propose to the Iraqi legislator to draw up a provision within the aviation law obliging air carriers to compensate for death damage in the event of the plane or parts or objects thereof falling on a person on the surface of the earth, especially since the international conventions ratified by the Iraqi legislator, including the Warsaw and Montreal conventions, did not include this provision to work to fill this legislative deficiency.

Propose to the Iraqi legislator the need to provide for insurance by air carriers, because the issue of insurance against errors for carriers has not been regulated legislatively due to the assumption of air transport operations by airlines, which are naturally public companies.

Believe it is necessary for the Iraqi legislator to regulate the joint liability of air transport companies within the provisions of the civil aviation law, as we have not found the provision of this important subject within the aviation law in force.

Call on the Iraqi legislator to make the compensation order without a minimum or maximum and to make it according to the general rules of compensation in order to avoid the injustice of the passenger or carrier, with the obligation of airlines to inform passengers about the rights they deserve, so that the Traveler is aware of his right to compensation when there is a breach.

Recommend the Iraqi legislator to issue special legislation to protect and take care of the rights of the air traveler in case he is refused to board due to excess booking, flight cancellation, flight delay, following the Arab and foreign legislation in this regard.

References

Abdullah, H. A. M. (2017). The civil responsibility of the air carrier for the safety of passengers: A comparative study. *Journal of Tikrit University of Law, Iraq*, 1(2), 575.

- Abu Zeid, R. (1994). *Air law (Civil aviation law) (Vol. I.4)*. Dar Al-Fikr Al-Arabi.
- Ahmed, A. F. M. (n.d). *Private air Law*, No I. Al-Galaa Office, Mansoura.
- Aksasi, A. (2010). *Commitment to ensuring safety in contracts (Vol. I)*. University Thought House.
- Al-Arini, M. F., & Mohammedin, J. W. (1998). *Air Law (Air Navigation and Air Transport)*. University Publishing House.
- Al-Mutairi, W. F. (2011). *Responsibility of the international air carrier in the contract of carriage of passengers in accordance with Kuwaiti and Jordanian law and international conventions (Master's thesis)*. Middle East University, Jordan.
- Al-Sahli, F. B. S. B. S. (n.d). The scope of responsibility of the passenger air carrier and its basis in the Saudi civil aviation system [Electronic version]. Retrieved from https://jfslt.journals.ekb.eg/article_101152_5d7c00fa506834c1e1f4666a262eb3f0.pdf
- Al-Shami, M. H. (1990). *The corner of error in civil liability*. Dar Al-Nahda Al-Arabiya.
- Fahim, M. M. (1986). *The subjection of domestic air transport to the regime of the Warsaw Convention on international transport*. Maarif Establishment.
- Haddad, E. (2005). *Air law*. Publications of the Faculty of Law, Damascus University.
- Khair, A. M. (2001). *Responsibility of the air carrier (Vol. I.1)*. Don Publishing House.
- Osman, A. H. (1983). *The obligation of safety in Air Transport*. Don Publishing House.
- Rabdi, I. G. (2011). Liability of an international air carrier for damage caused to persons and their baggage - A Comparative Study. *House of Culture for Publishing and Distribution*.
- Rabdi, I. G. (2011). *Liability of an international air carrier for damage caused to persons and their luggage - A Comparative Study*. House of Culture for Publishing and Distribution.
- Rahim, A., & Tharwat. (1966). *Exemptions and permits in marine insurance (Item 216)*. Mukhaimer Press.
- Weigand, T. A. (2001). Accident, Exclusivity, and Passenger Disturbances Under the Warsaw Convention. *American University International Law Review*, 16(4), 891-968.
- Ya Malki, A. (1998). *Air Law - A Comparative Study*. House of Culture for Publishing and Distribution.