

Air Transport in Iraq: A Legal Analysis

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Abstract: In Iraq, the air transport of persons, goods and luggage, even in the case of domestic carriage, is governed by the provisions of the Warsaw Convention of 1929 and its amendments according to Article 170 of the Iraqi Civil Aviation Act No 148 of 1974 and Article 126 of the Iraqi Transportation Act No 80 of 1983. The Warsaw Convention and its amendments cover the issues pertaining to the liability of air carrier in case of death or bodily injury of a passenger; destruction, loss or damage to checked baggage; and delay of passengers and baggage during the flight. However, these conventions do not cover important aspects of the passengers' rights in air transport sector and contain many vague terms such as accident, bodily injury, embarking, disembarking and delays. This article attempts to provide an overview of the legal framework of air transport in Iraq and the necessity to make amendments to this legal framework in order to ensure the rights of passengers in this sector. For this purpose, the article was prepared with reference to systematic analysis by applying a document analysis method.

Keywords: Warsaw Convention; Consumer; Air Carrier; Compensation; Flight.

1. Introduction

The air transport has become one the best means of transportation in modern era, thus it cannot be compared with any other traditional means of transportation, especially in the operations of international transport (Arnaoot, 2012, p.157). It also has a great importance to increase the international trade and communication among nations (Giemulla and Weber, 2011, p.3). Thus, it significantly contributed to the economic growth and social development among people from different countries throughout the world (Sheehan, 2013, p.1). The legal framework of air transport in Iraq is composed of the body of laws and regulations such as the Iraqi Civil Aviation Act No 148 of 1974, the Iraqi Transportation Act No 80 of 1983, the Regulation of General Establishment of Civil Aviation No 4 of 1996, the Law of Iraqi Airways Company No 108 of 1988, and the Internal Regulation of the Iraqi Airways Company No 20 of 2000.

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3. The Iraqi Civil Aviation Act No 148 of 1974

The Iraqi Civil Aviation Act No 148 of 1974 (CAA) comes as the head of the list of laws and regulations which regulating the air transport sector in Iraq. This law organizes the essential provisions relating to civil aviation in the country including the civil aircrafts and the airports (Civil Aviation Act, 1974). According to this law, the Iraqi Civil Aviation Authority is responsible for all the affairs of aviation in the country. In general, it is responsible for the general policy of air transport in Iraq. CAA provides that the air carriage of persons, goods and luggage, even in the case of domestic carriage, is governed by the provisions of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 Oct 1929, and any supplementary and amending conventions which have been ratified by Iraqi government (Civil Aviation Act, 1974). These amendments include the Hague Protocol of 1955 to amend the Warsaw Convention, the Guadalajara Supplementary Convention of 1961 and the Montreal Additional Protocols No 1 and 2 of 1975. Therefore, these conventions govern the liability of air carrier for damages of passengers because of air accidents (Civil Aviation Act, 1974).

4. The Iraqi Transportation Act No 80 of 1983

The second law relating to air transport is the Law of Transport No 80 of 1983 which aims at realizing the fair balance between the obligations the parties of the contract of transport (Transportation Act, 1983). This law has unified the provisions which govern the contract of transport because it is applied to all kinds of transport. Its provisions also contain the determination of the concept of transport contract, the obligations and the rights arising from this contract. As for the provisions concerning air transport, it can easily found that four articles only are specified for it. These articles are relating to: firstly, the concept of air transport which is defined as the carriage of persons and goods by air when undertaken by a professional carrier (Transportation Act, 1983). Secondly, the time period through which the carrier would be liable for damage towards the passengers during the flight. According to this law, the air carrier shall be held responsible for injury sustained by a passenger from the moment of crossing the departure lounge of airport buildings, and on boarding the airplane during the flight as well as on leaving the airplane until he enters the destination of arrival (Transportation Act, 1983). Thirdly, the reference that air transport of persons, goods and luggage, even in the case of domestic carriage, is governed by the provisions of the Warsaw Convention and its amendments (Transportation Act, 1983). Fourthly, and last, the obligation of the air carrier to accurately ascertaining that the aircraft is airworthy for navigation before the flight (Transportation Act, 1983).

5. Other Laws

Other laws and regulations relating to air transport organize the function of the specialized institutions in the field of air transport. Firstly, the Regulation of General Establishment of Civil Aviation No 4 of 1996 determining the duties of the Civil Aviation Authority which supervising on the civil aviation in Iraq in general (Regulation of General Establishment of Civil Aviation, 1996). It also determines the administrative and technical departments of this institution which carry out the tasks mentioned in this regulation (Regulation of General Establishment of Civil Aviation, 1996). Secondly, the Law of Iraqi Airways Company No 108 of 1988 according to which

the Iraqi Airways Company was established. This law provides the administration of the company by a board of directors and determines its formation and its powers to realize the objectives of the company. Thirdly, the Internal Regulation of the Iraqi Airways Company No 20 of 2000 which regulates with full details the formation of the board of directors of the company and the conditions of membership of this board. It also determines the technical and administrative departments of the company and the functions of each department.

5- Discussion

From the above discussion, it is obvious that the Warsaw Convention and its amendments are applied to domestic and international air transport in Iraq. Any other laws which are contradict with the Warsaw Convention and its amendments are not applicable. Thus, these conventions are the essential law which regulates air transport in Iraq. They cover the issues pertaining to the liability of air carrier in case of death or bodily injury of a passenger; destruction, loss or damage to checked baggage; and delay of passengers and baggage during the flight (Warsaw Convention, 1929). However, the Warsaw Convention and its amendments do not cover other important aspects of the consumer rights in air transport sector. Due to the fact that they do not address particular aspects of the relationship between the consumer and air carrier such as price transparency and assistance for travellers in cases of air travel disruption namely, denied boarding, long delay before the flight and cancellation of flights (International Civil Aviation Organization (ICAO), 2013, p.2). In addition to that they do not address the rights of persons with disability when travelling by air, although this issue is very important in Iraq because of the increasing number of disabled persons resulting from wars and terrorism, and the absence of health care (Faker, 2014). They also include a minimum level of rights such as the limited compensation for passengers because they only cover bodily injury in the event of an accident, and do not compensate the damage arising from the delay unless the air carrier cannot prove that it took the necessary measures to prevent the delay (Hermida, 2015, p.5). In addition to that the costly and complex procedures must be followed by the plaintiff to get compensation, which means that they provide only a limited level of protection for passengers (Hermida, 2015, p.5). Many consumers find the provisions of the convention are difficult to understand and to be implemented at the national level (Alwashegi, 2013). Therefore, the provisions of international conventions relating to air carrier liability have achieved the interest of the air carrier against the consumer (Al-Mutairi, 2011, p.49). On the other hand, the Iraqi legislator has stipulated that the provisions of the Warsaw Convention and its amendments are applicable to domestic air transport of passengers, baggage and cargo which is performed entirely within the territorial boundaries of the state (Civil Aviation Act, 1974; Transportation Act, 1983). This trend of the Iraqi legislator aims at the unification of legal organizing of air transport without taking into consideration its domestic or international feature (Al-Arini, 2001, p.66). It also encourages the national carrier to carry out the domestic transport making use of the advantages stated in the Warsaw Convention for air carrier (Al-Arini, 2001, p.66). Moreover, adopting the international conventions of air transport ensures keeping pace with all the future developments and changes occurred to the legal system of international air transport without the need to amend the national law to accord with these developments (Rabadi, 2011, p.48). But this position has been severely criticized because it leads to the application of legal rules that are not compatible with the nature of air transport.

This is due to the fact that the Warsaw Convention and its amendments did not establish a comprehensive system for all the issues relating to air transport (Ahmed, 2005, p.32). Thus, there is a need to referring to the general rules mentioned in the civil law, the commercial law and the transport law to find a solution for the problems which are not treated in these conventions in spite of the fact that they are not suitable for the particularity of air transport (Ahmed, 2005, p.32). In my opinion, the Iraqi legislator should have taken into consideration that the Warsaw Convention and its amendments do not cover comprehensive area of law, but only regulate certain rules relating to air transport. Thus, there must be a special section in the Iraqi Civil Aviation Act No 148 of 1974 or the Iraqi Transportation Act No 80 of 1983 to regulate the domestic air transport instead of following the provisions of international conventions which are not appropriate for the nature of the domestic air transport.

6- Conclusion

Based on the above, the legal framework of air transport in Iraq requiring substantial modifications by amending existing laws; or enacting additional laws or regulations in order to deal with issues which are not addressed by the applicable international conventions in Iraq such as price transparency and assistance for travellers in cases of air travel disruption namely, denied boarding, long delay before the flight and cancellation of flights. Moreover, these new laws or regulations can clarify ambiguous issues that were not clarified by the Warsaw Convention and its amendments such as the concept of the accident and bodily injury; the type of damage can be compensated by the air carrier; and determination of time period through which the carrier would be liable for damage towards the passengers during the flight.

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