

Air Carrier's Liability for Cargo

Meglali Samira

Rank: PhD student

University: Frères Mentouri Constantine 1

Faculty: Faculty of Law

Department: Private Law

Specialization: Insurance

E mail: samirameglali@gmail.com

Supervisor: Boudlio Salim

Rank: Professor

Assistant supervisor: Karima Abbas

Rank: Senior Lecturer (A)

Affiliation laboratory: Contracts and Business Law Laboratory

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Abstract

This study addresses the liability of the air carrier for cargo by examining the international and domestic sources of the special rules governing air carrier liability for goods, as well as the conditions required for establishing such liability. It also determines the legal framework governing liability claims, whether in terms of the competent court to adjudicate disputes or the parties involved. Furthermore, the study analyses the sanctions resulting from the air carrier's breach of its obligations, highlighting the rules of compensation for damage caused to the cargo, as well as the cases of exemption from and limitation of the air carrier's liability.

Keywords: Liability, air carrier of cargo, international air carrier, compensation, goods, exemption, damage, international conventions, contractual liability, mandatory rules.

Introduction

Air navigation plays an important role in the economic and social development of states by bridging vast distances in a relatively short time, thanks to the aircraft, which is considered one of the main means of transport in civil and commercial aviation and a prominent feature of modern development, especially with the advancement of the aviation industry.

In the field of freight transport, air cargo plays a significant role in global trade and transportation, ensuring the efficient movement of goods across long distances. However, like any form of transport, air cargo operations are exposed to risks and legal responsibilities, particularly in cases where the air carrier fails to fulfil its obligations.

This leads us to the following research question:

To what extent has the Algerian legislator succeeded in balancing the regulation of air carrier liability for cargo under domestic law and international conventions?

In this study, we adopt the analytical method by collecting information from various sources and analysing legal texts, whether domestic or international, in order to facilitate their understanding and provide a simplified explanation that enhances comprehension.

To address the research problem, this study is divided into two main parts:

1. Sources and conditions for establishing air carrier liability for cargo, including:
 - 1.1. The sources of air carrier liability for cargo.
 - 1.2 The establishment of air carrier liability in cargo transport.
2. Sanctions resulting from the carrier's breach of its obligations, including:
 - 2.1. The compensation claim in air cargo liability.
 - 2.2. Agreements on exemption or limitation of air cargo liability.

1. Sources and Conditions for Establishing Air Carrier Liability for Cargo

The entry of aviation into commercial exploitation, particularly in the field of cargo transport, and the risks associated with such transport for both the carrier and the shipper, have raised numerous issues. These issues mainly revolve around the legal characterization of liability and the extent to which it is influenced by the rules of civil liability.

It is not possible to properly understand this liability without identifying its sources, both domestic and international, as well as the conditions under which air carrier liability is established.

First: The source of air carrier liability for cargo

Air transport is characterized by speed and time efficiency, which has made the world more interconnected. It has enabled aircraft to cross the political and natural borders of states, thereby giving international character to the laws governing it. Due to the multiplicity of countries into which air transport may operate, states felt the necessity of unifying the rules governing it, particularly those related to air carrier liability, which is internationally regulated in two main forms.

A. The dual international regulation of air carrier liability for cargo

Several international conventions have been established to regulate air carrier liability; however, most countries rely mainly on two conventions: the Warsaw Convention of 1929 and the Montreal Convention of 1999.

The Warsaw Convention was concluded between 4 and 12 October 1929 in Warsaw, attended by representatives of 33 states. It aimed to achieve two main objectives: the unification of certain rules governing air transport and the reconciliation between the interests of carriers and those of cargo owners. The Convention entered into force in 1933 and was followed by several protocols and amendments, including the Hague Protocol of 1955, which became applicable in 1963, as well as the Guadalajara Convention of 1961 concerning international air transport performed by a person other than the contracting carrier. It was also supplemented by the four Montreal Protocols signed in September (Naïma, 2021–2022, pp. 32–33).

Despite the persistence of the Warsaw Convention, some states objected to certain provisions, particularly those relating to limits of compensation for damages. As a result, the International Civil Aviation Organization (ICAO) considered that the best solution was to adopt new international conventions. The Organization submitted a mandate to the Council of the International Civil Aviation Organization requesting the amendment of the Warsaw Convention.

A draft was subsequently prepared following extensive consultations within the Legal Committee. At the International Conference on Air Law held in Montreal in 1999, the draft Montreal Convention was presented and adopted by 121 states. It aimed to unify certain rules of international air transport and entered into force on 4 November 2003.

This Convention came in response to economic developments in the aviation sector and introduced solutions aimed at restoring balance between the various interests involved in air transport activities (Fadli, 2005, pp. 10–11).

1. Characteristics of Air Carrier Liability for Cargo in International Conventions

The Convention adopted a compromise approach in defining the civil liability regime, whereby it established that air transport liability is contractual in nature and arises as soon as the carrier breaches the contractual obligations imposed on it under the air transport contract. This characteristic of air cargo liability is reflected in the transport contract concluded between the carrier, as one party, and the air cargo shipper, as the other party, for the carriage of goods by air from the point of departure to the point of destination by aircraft.

We observe that the Montreal Convention of 1999 did not depart from the principle established by the Warsaw Convention of 1929 regarding the source of air carrier liability for cargo, which is the contract of carriage of goods by air between the air carrier as one party and the shipper as the other party, as reflected in the provisions of both the Warsaw Convention of 1929 and the Hague Protocol of 1955.

Most jurists and judges have tended to recognize the contractual nature of air carrier liability for cargo. In contrast, a minority view holds that the source of this liability is the law itself rather than the contract (Naaman, 2007).

The will plays a major role in shaping the framework of air carrier liability. Although it is contractual in nature, it is characterized by a collective nature, as it aims to protect shippers against the arbitrariness of carriers. Its provisions are mandatory, and it is not permissible to agree to contravene them. This is considered an influence of maritime law on air law.

The liability provisions in the Warsaw Convention, with all its amendments, as well as the Montreal Convention of 1999, are mandatory and binding rules for all contracting states. It is not permissible to agree on anything that contradicts these provisions in the contract of carriage (air waybill). These rules are primarily intended to protect shippers; therefore, it is permissible to agree on a more favorable position for the shipper, granting them higher compensation than the minimum limits provided by law, in accordance with Articles 22 and 23 of the Montreal Convention of 1999, as well as the preceding conventions and protocols (Naïma, 2021–2022, pp. 36–37).

1.1.2 The impact of international regulation on Algerian law

This was related to international law in general, and it consequently had an impact on Algerian law, as the application of French legislation in the field of aviation continued under Law No. 62-157 of 31 December 1962. The French Civil Aviation Law of 1924, as amended in 1957, was applicable, and Articles 321(3) and 22(3) incorporated the rules of the Warsaw Convention of 1929 into both domestic and international air transport.

After 1964, certain rules began to emerge in Algerian civil aviation law concerning air cargo transport, reflecting the provisions of the Warsaw Convention of 1929 and its amendment under the Hague Protocol of 1955. This influence is particularly evident in the post-independence

period, given Algeria's desire for international integration, which is reflected in its adherence to the contractual nature of liability rules and the adoption of presumed fault as their basis.

Article 176 of the Algerian Civil Code sets out the general rules of contractual liability, although the Algerian legislator did not explicitly refer to contractual fault. Instead, greater emphasis is placed on delay in performance or non-performance of obligations, which constitutes the objective element of liability.

Accordingly, air carrier liability for cargo is governed by special rules. It is noted that the Air Code of 1998 (now repealed, replacing the 1964 airspace legislation) required reference to the latter to determine the legal basis and nature of this liability. The Algerian legislator did not explicitly state whether air cargo liability is contractual or tortious, whether in cases of negligence or intent. However, this can be inferred from Article 138 of the Algerian Air Code of 1998, which provides that every air carrier of goods must conclude a contract whereby the carrier undertakes, for consideration, to transport by aircraft goods received from the sender from one airport to another for delivery to the consignee or his legal representative.

Article 146 of the same law further states that the carrier is liable for losses and damage resulting from the loss or damage of checked baggage or cargo, provided that the cause of the loss occurred while the baggage or cargo was under the custody of the air carrier, whether at the airport or on board the aircraft.

The air carrier has several obligations, the most important of which is ensuring the safe delivery of goods within the agreed time. This is a contractual obligation. It is sufficient for the consignee to prove the occurrence of damage during the execution of the contract to establish the liability of the air carrier.

Therefore, air carrier liability for cargo under Algerian legislation is a contractual liability, based on the will of the parties. However, this will is regulated by the Algerian legislator in order to prevent one party from dominating the other. This is where the mandatory nature of these rules becomes apparent, as the liability provisions set out in the Algerian Air Law are mandatory rules that cannot be derogated from by agreement, since they relate to a public service operated by the State.

Article 78 of the Algerian Airspace Code (No. 49, 1964) nullifies any contractual clause intended to directly or indirectly affect the liability of the air carrier for cargo, while taking into account the existence of a contract of carriage.

1.2 Establishment of Air Carrier Liability for Cargo

In order for air carrier liability for cargo to arise, a set of conditions must be established, namely the occurrence of damage and the fact that the incident or event took place during the air transport period. Once these conditions are met, the injured party has the right to bring an action in accordance with specific provisions set out in the Warsaw Convention and in domestic law.

1.2.1 Conditions for Establishing Air Carrier Liability for Cargo

The text of the Warsaw Convention of 1929 concerning air transport liability relates to the carriage of goods and registered baggage, which refers to items handed over to the air carrier for transportation and recorded in a transport form or document. As for other baggage retained by the passenger and remaining under their custody during the air transport period, the Convention did not address it (Radwan, p. 309).

And Article 18 of the French law states that the carrier is liable for damage occurring in the event of destruction, loss, or damage to checked baggage or cargo, provided that the incident giving rise to the damage occurred during air transport... (Belkacem, 2015).

From the above, it is understood that there is an obligation to ensure the safety of goods entrusted to the air carrier and its auxiliaries. Accordingly, the carrier must prove whether it has taken all necessary measures. However, under Algerian law, the obligation of the air carrier for cargo is an obligation of result; thus, it cannot avoid liability except by proving the existence of an external cause, as stated in Article 146 of the Civil Aviation Law.

From this, we conclude that air carrier liability for cargo arises in the event of a breach of the obligation to ensure the safety of goods and checked baggage, as it requires the fulfillment of three conditions, namely:

A/ Occurrence of damage: Article 18(1) of the Warsaw Convention of 1929 provides that the air carrier is liable for damage occurring in the event of destruction, loss, or damage to any checked baggage or any cargo...

This is confirmed by Article 18(1) of the Montreal Convention of 1999. From this, it can be concluded that damage refers to any harm resulting from the carrier's breach of its obligation to preserve the goods against losses and damages arising from destruction, loss, or deterioration of checked baggage or cargo. This is also understood from Article 146 of the Algerian Civil Aviation Law, whereby the carrier is liable for damages and losses suffered by passengers or shippers as a result of the total or partial destruction of baggage or goods. The same applies when the cargo is damaged in a way that affects its value or its intended use, in which case the carrier is obliged to compensate for the resulting damage.

B/ Occurrence of an event: The conventions use the term "event" (événement) when referring to air carrier liability for cargo and checked baggage. This term is broader than "accident," as it encompasses all possible causes of damage, whether related to air transport or otherwise.

The reason for this is that the air carrier has effective and almost complete control over checked baggage and cargo, more than it has over passengers. This leads to the question of the time period during which air transport liability arises, a matter that will be addressed later. (Samira, 2018)

C/ Occurrence of the event causing damage during the air transport period

This refers to the temporal scope within which the air carrier is liable for any damage affecting cargo and checked baggage, resulting in compensation to the passenger or shipper. This period is defined in Article 18 of the Warsaw Convention of 1929, as amended by Article 5 of the Guatemala Protocol.

Accordingly, the air transport period includes the time during which the goods are under the custody of the carrier, whether at the airport, on board the aircraft, or at any other place in the event of an unscheduled landing outside the airport.

It is understood that the content of the obligation to ensure the safety of goods is based on the concept of custody, meaning that this obligation begins from the moment the shipper (sender) relinquishes possession of the goods or checked baggage and hands them over to the air carrier, at which point they enter the carrier's possession and custody and become under its control.

Thus, the basis of air carrier liability is the criterion of custody, meaning supervision and control over the goods, rather than the risk of aviation itself, as is the case in passenger transport contracts. (Belkacem, 2015, p. 234)

Accordingly, for air transport liability to arise, two conditions must be met:

- That the goods and checked baggage are under the custody of the carrier.
- That such custody is exercised within the scope of air transport, whether on board the aircraft, at the airport, or outside it in cases such as emergency landing. An exception is made for the period during which the goods and baggage are subject to road, sea, or river transport outside the airport, in accordance with Article 146(2) of the Civil Aviation Law.

It is self-evident that the carrier's liability ends once the goods and checked baggage are delivered to the person responsible for their receipt and transport.

Accordingly, unloading the goods from the aircraft or their presence in the customs area does not exempt the carrier from liability, as held by the Paris Court of Appeal in its judgment dated 18 October 1978.

1.2.2 Rules Governing the Action for Air Carrier Liability for Cargo

International and domestic legislators have regulated the action for liability brought against the air carrier of cargo and established specific rules for it, taking into account both the interests of the injured party and those of the air carrier. In addition, Civil Aviation Law No. 98-06 of 27 June 1998, which sets out the general rules relating to civil aviation in Algeria (Law No. 48 of 1998), as amended and supplemented by Ordinance 03-10 of 13 August 2003 and Ordinance 15-14 of 15 June 2015, contains the procedural provisions governing liability.

These provisions include the main issues, namely:

A/ Parties to the action: These consist of the plaintiff and the defendant. The defendant is the air carrier, while the plaintiff is the owner of the cargo, i.e., the person who has suffered the damage.

The plaintiff: In cargo transport, the plaintiff is usually the consignor (sender) or the consignee, i.e., the party who has suffered the damage. The action is brought by the person whose name appears in the air waybill.

Article 12(4) and Article 13 of the Warsaw Convention provide that the consignor has the right to bring a claim for compensation against the air carrier, as he retains control over the goods. This right does not end until the consignee's right begins upon receipt of the goods or the air waybill, or upon the carrier's acknowledgment of loss of the goods, or after seven days have passed from the agreed delivery date. This period was extended to 21 days under the Hague Protocol of 1955.

The damage may affect both the consignor and the consignee; therefore, both are entitled to claim compensation. However, the carrier is not required to compensate twice, as compensation is paid only once (Nasser, 2014, p. 257).

Article 152(1) of the Algerian Civil Aviation Law provides that, if baggage or cargo is taken without any protest from the consignee, this constitutes proof that it was received in good condition at the time of delivery, in accordance with the transport document.

Paragraphs 2 and 3 of the same article further stipulate that the consignee must submit a complaint in the event of loss or damage to the goods within the prescribed time limits. In cases

of damage, the complaint must be made within a maximum of three days, while in cases of cargo loss, it must be submitted within seven days from the date of receipt. As for loss of goods, the complaint must be made within 24 hours at most, starting from the date on which the baggage or cargo was supposed to be placed at the consignee's disposal.

This protest (notice of complaint) is considered a fundamental requirement for the admissibility of the consignee's action against the air carrier, as understood from the last paragraph of Article 152, which states that: "In the absence of protest within the prescribed time limit, any action brought against the carrier shall be inadmissible, except in cases of fraud committed by the latter."

Article 152(4) also provides that the consignor of baggage or goods may bring an action against the first carrier, while the consignee, as the holder of the right of receipt, may bring an action against the last carrier.

From this provision, it is clear that the law grants both the consignor and the consignee the right to bring an action against the air carrier for cargo in relation to its contractual obligation. The party who suffers damage, whether the consignor or the consignee, must submit a protest against the carrier within the time limits specified in Article 152 of the same law, depending on each case.

Otherwise, the provisions of the Warsaw Convention of 1929 apply to matters not regulated by domestic law. Furthermore, the insurance company that insured the goods and paid compensation to the consignor or consignee has the right to bring an action against the air carrier, based on the principle of subrogation. Accordingly, the insurer is substituted for the injured party in his rights, including the right to exercise the liability action (Nasser, 2014, pp. 260–261).

The defendant: As a general principle, the action is brought against the air carrier, whose identification is not difficult when the contract is concluded directly between the passenger or shipper and the air carrier, and when the latter performs the carriage himself, being the contracting carrier.

However, a problem arises in cases of the death of the air carrier, as well as in cases involving successive carriers, contractual carriers, and actual (operating) carriers.

In the case of the death of the air carrier, the Algerian legislator did not regulate this situation. Therefore, reference is made to Article 27 of the Warsaw Convention, which provides that in the event of the debtor's death, an action for liability within the limits prescribed by the Convention shall be brought against those who represent him. Accordingly, the action is brought against the heirs of the air carrier (Al-Bahiji, 2013, pp. 30–31).

As for successive carriers, it becomes difficult to determine liability or identify the defendant in a liability action. This refers to transport carried out by multiple air carriers through successive and different airlines under a single contract or several contracts. The Algerian legislator has regulated this situation in Article 153 of the Civil Aviation Law, which states that in the case of air transport carried out by several successive carriers, each carrier who accepts passengers, baggage, or cargo is considered a contracting party to the contract of carriage, but only within the portion of transport under its control.

The same article distinguishes between passenger transport and cargo transport. In the latter case, Article 153(4) provides that the consignor of baggage or goods may bring an action against

the first carrier, while the consignee, as the holder of the right of receipt, may bring an action against the last carrier. In addition, both may bring an action against the carrier who performed the transport during which the damage, loss, or delay occurred. This is also provided for in Article 30 of the Warsaw Convention of 1929.

The Algerian Civil Aviation Law adopted, from the Warsaw Convention of 1929, the same rule concerning joint liability between carriers, in order to guarantee the injured party's right to compensation and protect them from the insolvency or bankruptcy of one of the carriers.

As for the contractual carrier and the actual carrier, the Guadalajara Convention of 1961 like the Warsaw Convention provided a definition of the air carrier and distinguished between the contractual carrier and the actual carrier. It defined the contractual carrier in Article 1(b) as any person who is a party to a contract of carriage governed by the Warsaw Convention of 1929 and concluded with the passenger, consignor, or any person acting on behalf of the passenger or consignor.

The actual carrier, according to Article 1(c), is any person other than the contractual carrier who, by authorization of the contractual carrier, performs all or part of the carriage referred to in Article 1(b). However, for that part of the operation, the actual carrier is not considered a successive carrier. The distinction between them lies in the fact that the actual carrier is not a party to the contract of carriage that it performs, whereas the successive carrier is a party to the contract with respect to the portion of carriage it performs itself (Nasser, 2014, p. 262).

The legal problem that arises here concerns the situation where the performance of the contract of carriage is undertaken by both contractual carriers and actual carriers. In such a case, how can the liable party be determined?

The solution to this issue is provided in Article 7 of the Guadalajara Convention, which states: "An action for liability may be brought..."

With respect to carriage performed by the actual carrier, the action for liability may be brought against that actual carrier, or against the contractual carrier, or against both jointly or separately, according to the choice of the plaintiff. If the action is brought against only one of them, the other may be joined to the proceedings upon request. The law of the court seized of the dispute governs such joinder and the related procedural rules. (The law of the court seized refers to the law of the competent court hearing the dispute; see in this regard: F. Al-'Arini, *op. cit.*, pp. 311–312).

From the wording of this article, in cases of multiple carriers and the existence of both an actual carrier and a contractual carrier, the consignor or consignee may bring an action against the actual carrier for what occurred during the segment of transport it performed.

They may also bring the action against the contractual carrier for damages occurring during the flight, including those that occurred during the portion of transport performed by the actual carrier. Alternatively, the action may be brought against both jointly or separately. If the action is brought against only one of them, that party may request that the other be joined to the proceedings (Nasser, 2014, p. 263).

The provisions relating to the determination of the parties to the action were neither amended nor affected by the Hague Protocol of 1955, nor by the Guatemala Protocol of 1971, nor by the Montreal Protocols of 1975. Accordingly, these provisions remain applicable to cases brought before the Algerian judiciary.

However, where the transport is performed by both contractual and actual carriers, the provisions of the Guadalajara Convention apply.

Second: The competent judicial authority to adjudicate the action

Article 155 of the Algerian Civil Aviation Law provides that an action for liability arising from damage caused to persons transported, their baggage, or cargo may be brought either before the court of the place where the establishment that concluded the contract is located.

The legislator does not distinguish between domestic and international transport in determining jurisdiction for bringing a liability action, as it grants the injured party the choice to file a compensation claim. This corresponds to Article 28 of the Warsaw Convention of 1929, which further adds the possibility of bringing the action before the court of the place of destination. This provision leaves the injured party free to choose the competent jurisdiction.

Third: Defences raised before the court

Both the international and national legislators have sought to protect the air carrier and prevent liability actions from being prolonged, which could impose a heavy burden on the carrier and disrupt its operations. Accordingly, they have granted the carrier certain defences that may be used to exclude or limit liability, in addition to substantive defences previously discussed. These procedural defences are raised before the court examines the merits of the case.

Plea of inadmissibility of the action

Article 152, paragraphs 2 and 3 of the Algerian Civil Aviation Law provide that, in case of damage, the consignee must address a protest to the carrier immediately upon discovery of the damage, within a maximum period of three days for baggage and seven days for cargo, starting from the date of receipt. In cases of loss or delay, the protest must be made within a maximum period of fourteen days from the date on which the baggage or cargo should have been placed at the consignee's disposal (Ordinance 14-15, 1998–2003–2015).

This is also provided for in Article 26(2) of the Warsaw Convention of 1929.

The Hague Protocol amended these time limits, making them 7 days, 14 days, and 21 days respectively. These time limits may not be shortened, as such a reduction would constitute a condition of exemption from liability and would therefore be null and void under Article 23 of the Convention. However, any clause extending these time limits is considered valid.

The law requires that the protest be recorded by means of a written reservation noted on the transport document or by any other written instrument sent within the prescribed time limit for filing the protest. This is provided for in the last paragraph of Article 152 of the Civil Aviation Law, as well as in Article 26(4) of the Convention (Al-Faqi, 2007, pp. 232–240).

- Plea of extinction of the action or prescription (time-bar):

The air carrier may invoke this defence against the injured party to exclude liability in all its forms, particularly liability for cargo transport.

Article 156 of the Algerian Civil Aviation Law provides that the limitation period for actions is two years in respect of:

1. Actions for payment of charges due for search, rescue, and salvage services, with the limitation period running from the day on which the operation is completed.
2. Actions for liability for loss or damage to baggage and cargo, subject to the provisions of Article 153. The limitation period runs from the day the aircraft arrives or the day on which it should have arrived at the intended destination.

This is provided for in Article 29 of the Warsaw Convention of 1929, which states that an action for liability must be brought, otherwise the right to bring it is extinguished, within two years from the date of arrival of the aircraft at its destination, or from the date on which it should have arrived, or from the date on which the transport was stopped. The law of the court seized of the dispute determines the method of calculating this period.

Legal scholars have differed on whether the two-year period should be considered a limitation period or a forfeiture period, due to the differences in their rules regarding interruption and suspension (Nasser, 2014, p. 270). Some consider it a limitation period rather than a forfeiture period, meaning that it is subject to rules of suspension and interruption. Their argument is that all other forms of transport require actions to be brought within short periods, and air transport does not differ from other types of transport except in its mode of execution. (The Algerian legislator adopted this view by referring to Article 156 of the Algerian Civil Aviation Law, which describes it as a limitation period rather than a forfeiture period.)

As for the calculation of the time limit, the method is determined in accordance with the law of the court seized of the dispute. If the liability action is brought before the Algerian judiciary, reference is made to the last paragraph of Article 156, which states: “The time limit runs from the day of arrival of the aircraft or the day on which it was supposed to arrive at its destination.” Article 35 of the Montreal Convention of 1999, which corresponds to Article 29 of the Warsaw Convention of 1929, provides that:

1. The right to compensation shall be extinguished if the action is not brought within two years from the date of arrival at the place of destination, or from the date on which the aircraft should have arrived, or from the date on which the transport was stopped.
2. The law of the court before which the action is brought determines the method of calculating this period (Nasser, 2014, p. 275).

Conclusion:

The main sources of air carrier liability for cargo are international conventions, primarily the Warsaw Convention of 1929 on the Unification of Certain Rules Relating to International Carriage by Air, and the Montreal Convention of 1999 amending it, alongside Algerian domestic legislation. The rules governing air carrier liability for cargo are characterized by their contractual and mandatory nature, meaning that it is not permissible to derogate from them by agreement.

The key conditions for establishing air carrier liability for cargo are the occurrence of damage and the occurrence of the event causing the damage during the air transport period. Given the exceptional nature of the rules governing air carrier liability for cargo, it is necessary to examine the rules governing the action for liability, particularly regarding the parties to the action, whether contractual or non-contractual carriers, as well as the competent judicial authority. The Algerian legislator grants the injured party the freedom to bring the action either at the domicile of the air carrier or at the principal place of its business.

As for the defences raised before the court, which aim to protect the air carrier and prevent disruption of its operations, the carrier may invoke inadmissibility of the action, extinction of the action, or prescription (time-bar).

2.Sanctions resulting from the air carrier's breach of its obligations in cargo transport

The main obligation of the air carrier is to preserve goods and checked baggage on board the aircraft. If the carrier breaches this obligation, which consists in ensuring the safety of goods and checked baggage, civil liability arises in its regard, unless it can prove that it has taken all necessary obligations and precautions together with its employees, or that it was impossible for them to take such measures. In such a case, the carrier is required to compensate for the resulting damage.

The general rule is that every damage must be compensated appropriately, and the amount of compensation is determined at the discretion of the court. It always falls within the discretion of the trial judge, who assesses the severity of the damage: compensation may increase or decrease accordingly (Nasser, 2014, p. 171).

2.1The action for compensation in air carrier liability for cargo

The liability of the air carrier for cargo is established as soon as the carrier breaches its obligations and fails to prove the absence of fault. Consequently, its liability is engaged to compensate for the damage caused to goods and checked baggage.

As a general principle, compensation is awarded for all damage according to its severity. However, the Warsaw Convention of 1929 departed from this principle by establishing a limit for compensation borne by the air carrier, below which it is not permissible to go.

2.1.1The principle of limitation of compensation

The Warsaw Convention of 1929 established the principle of limiting compensation in favor of the international air carrier through a mandatory maximum limit for compensation for damage to cargo, derived from maritime and railway transport laws. In order for the air carrier to benefit from this principle, two conditions must be met (Nasser, 2014, pp. 173–174):

_ International carriage: between two contracting states, or within a state with an external destination, or carriage performed for remuneration.

_ Instructions of the 1971 Guatemala Protocol on the air waybill (complete particulars). (The Algerian legislator has not ratified the 1971 Guatemala Protocol to date; therefore, the provisions of the Warsaw Convention of 1929 and the Hague Protocol of 1955 remain in force.)

_ The principle of maximum compensation under the Warsaw Convention of 1929 is justified by substantive considerations. First, the nature of air accidents, which may completely destroy the aircraft and cargo, making full compensation unfair to the carrier, who bears compensation for the owners of destroyed or damaged goods in addition to the loss of its fixed assets (Khaled, 1997, p. 89). Second, ensuring the continuity of the economic operation of air transport through the possibility of insurance, as the fixed limit enables the carrier to assess risks in advance without knowing the value of the cargo, thereby allowing it to conclude appropriate insurance that protects it from bankruptcy while ensuring reasonable compensation for the cargo owner (Al-Oula, 1998, pp. 231–232).

The Warsaw Convention of 1929 set a maximum limit for compensation for damage to cargo at 250 gold francs per kilogram (Article 22(2)), and for checked baggage and hand luggage at 5,000 francs per passenger (Article 22(3)). The gold franc was defined as 65.5 milligrams of gold with a fineness of 900/1000 (Article 22(4)).

The Hague Protocol of 1955 (28 September 1955) maintained the limit of 250 francs per kilogram for cargo and clarified that compensation is based on the weight of the damaged packages, whether directly or indirectly affected (Article 11(2)). It also added Article 25, which protects the employees and agents of the carrier by allowing them to benefit from the limitation of liability under Article 22, provided that their functions and the connection to the carrier are proven.

The Montreal Protocol of 1966 (applicable to passengers only) and the Guatemala Protocol of 1971 (5 March) maintained the 250 francs per kilogram limit for cargo, while introducing valuation provisions and setting 15,000 francs for death or delay. The Montreal Protocols of 1975 (25 September) replaced the monetary unit with the Special Drawing Rights (SDR) (Article 2): Warsaw original 17/332 SDR, Hague 17/332 SDR, and Guatemala 1000/17 SDR (for IMF member states).

Accordingly, the Algerian legislator explicitly provided in Article 150 of the Civil Aviation Law that compensation for damages applies only to passengers and did not address compensation for cargo and baggage. Therefore, reference is made to Article 22(2) of the Warsaw Convention of 1929 and its amendment by the Hague Protocol of 1955, which set compensation at 250 francs per kilogram for damage to cargo and checked baggage, while hand luggage carried by passengers on board is limited to 5,000 francs per passenger.

2.1.2 Increase in the amount of compensation

Or what is called the legal aggravation of air carrier liability, which was adopted by the Warsaw Convention of 1929 in cases where the bad faith of the air carrier is proven. In such a case, the carrier is deprived not only of relying on the provisions that limit its liability, but also of those that allow it to escape liability altogether. This increase or aggravation is divided into a contractual increase and a legal increase.

As for the contractual increase, any agreement to increase compensation beyond the maximum limit is considered valid. It is noted that this special contractual compensation is not a lump-sum amount payable automatically regardless of the value of the damage, but rather a new maximum limit of compensation which is not necessarily reached, but may not be exceeded. If it is proven that the value of the damage is lower than this new contractual maximum, the carrier is only obliged to pay the lower amount, in accordance with the principle that compensation must correspond to the damage suffered.

2.2 Agreements of exemption or limitation of air carrier liability for cargo and the scope of their invalidity

The air carrier of cargo who breaches its fundamental obligation of ensuring the safety of goods is subject to sanctions established by international conventions and domestic law, mainly the obligation to compensate for the damage caused to the goods. However, the carrier's liability may be reduced or entirely exempted in certain cases, which will be discussed in the following section. Likewise, such agreements of exemption or limitation may be declared void, which will also be addressed in the next section.

2.2.1 Exemption agreements concerning air carrier liability for cargo

Article 20(1) of the Warsaw Convention of 1929 provides that the carrier shall not be liable if it proves that it and its agents have taken all necessary measures to avoid the damage, or that it was impossible for them to take such measures. Paragraph 2 of the same article adds that the

carrier shall not be liable, in the case of carriage of goods and baggage, if it proves that the damage resulted from an error in piloting, operation of the aircraft, or navigation, and that it and its agents have taken all other necessary measures to avoid the damage (R. Sullivant, 1961, pp. 19–20).

Article 21 of the Convention further states that if the carrier proves that the damage was caused or contributed to by the fault of the injured person, the court may, in accordance with the applicable law, exclude or reduce the carrier's liability.

Accordingly, under the above provisions, the air carrier may be exempted from liability for damage caused to goods by proving absence of fault, which is established in two cases:

_ The carrier and its agents taking all necessary measures to avoid the occurrence of damage, or the impossibility of taking such measures, or the fact that the damage is attributable to the fault of the injured party. It should be noted here that Article 20(1) of the Warsaw Convention of 1929 states: "It was impossible for the carrier and its agents to take the necessary measures to avoid the damage." This includes force majeure, the inherent defect of the goods, and the act of a third party.

Based on the above, the grounds for excluding the liability of the international carrier are as follows (1997, p. 1071):

- 1- Taking the necessary measures to avoid damage.
- 2- Fault of the injured party.
- 3- Force majeure.
- 4- Inherent defect of the goods.
- 5- Act of a third party (error in navigation).

2.2.2: Invalidity of exemption or limitation agreements concerning air carrier liability for cargo

The Warsaw Convention of 1929 provides for cases in which the air carrier may be exempted from liability for cargo or have its liability reduced. This constitutes an exception to the rule of compensation and is referred to as exemption or limitation agreements. It is required that their purpose be either to fully exempt the carrier from liability or to reduce the amount of compensation (Farid, 1998, p. 253). However, there are cases in which such agreements are rendered void, and this section will address the scope of this invalidity.

Exemption agreements are those intended to modify the rules of liability arising from breach of contract or from the commission of an unlawful act, either by removing liability from the debtor so that its effects do not arise against him despite the existence of all its elements.

Therefore, the debtor is not required to pay compensation to the creditor, or the liability may be reduced while it remains borne by the debtor (Nasser, 2014, pp. 207–209).

On the other hand, the Warsaw Convention of 1929 declared null and void agreements exempting or limiting the liability of the air carrier. These agreements aim to regulate the effects of liability in a manner different from that established by law, as they concern liability arising from breach of contract. It is important not to confuse exemption agreements with those relating to the modification of the content of the contract by removing an obligation arising from it or by reducing it.

The first type of agreements does not aim to exempt the debtor from his obligation or reduce it; rather, the debtor remains bound by the obligation despite the existence of the exemption agreement and is required to perform it.

The effect of such agreements is limited to the fact that if the debtor fails to perform his obligation, he is not liable towards the creditor for non-performance; in other words, he is not obliged to compensate the creditor for the damage resulting from such non-performance.

As for agreements that modify the content of the contract by removing or reducing an obligation, the contracting party is not bound by the eliminated obligation, or is only bound within the limits of the reduced obligation, and no legal effect arises beyond those limits.

The Warsaw Convention of 1929 affirmed this invalidity in order to protect users of air transport, especially shippers, and to maintain the balance it established between two conflicting interests: the interest of the air carrier and the interest of air transport users. Article 23 of the Warsaw Convention of 1929 states: “Any clause tending to exempt the carrier from liability or to fix a lower limit than that provided in this Convention shall be null and void, but the nullity of such clause shall not entail the nullity of the contract, which shall remain subject to the provisions of this Convention” (Rabdi, 2011, p. 170).

The Hague Protocol of 1955, in Article 12 amending Article 21 of the Warsaw Convention of 1929, excluded from this nullity the clauses relating to loss or damage resulting from the nature of the goods or their inherent defect (Duwidar, 2014, p. 346).

In addition, Article 149 of the Algerian Civil Aviation Law adopts the same rule as Article 12 of the Hague Protocol amending Article 21 of the Warsaw Convention of 1929, stating: “In the event that the air carrier proves that the loss was caused by the injured person or that the latter contributed to it, the carrier may be exempted from liability or its liability may be reduced by the competent judicial authority.”

In other words, the carrier is not exempted from liability by agreement; rather, liability is excluded only if it is proven that the damage was caused by the fault of the injured party or that the latter contributed to its occurrence (Khaled, 1997, pp. 107–109).

The principle under the Warsaw Convention of 1929 is the nullity of agreements exempting or limiting liability, whether expressly stated or indirectly formulated. This principle also extends to any clause aimed at achieving the same result indirectly, such as reducing the rights granted by the Convention to the injured party, for example by shortening limitation or prescription periods, restricting protest time limits, or shifting the burden of proof onto the sender instead of the carrier. Such clauses are considered attempts to circumvent the Convention’s mandatory rules, especially since they make it difficult for the shipper to prove liability.

However, excluded from this nullity are clauses that increase the carrier’s liability by setting compensation limits higher than those provided in Article 22 of the Warsaw Convention of 1929. Such clauses do not conflict with Article 23 of the Convention, although their validity is left to the applicable national law.

Also excluded from nullity are any agreements exempting or reducing liability concluded after the occurrence of the damage, since the nullity established by the Convention applies only to agreements made prior to the occurrence of the damage, as stated in Article 32 of the Convention.

“All clauses of the contract of carriage and all prior agreements made before the occurrence of the damage shall be void if, through them, the contracting parties contravene the rules of this Convention, whether by determining the applicable law or by modifying the rules of jurisdiction.

This is considered logical and understandable, since the contract of carriage is a contract of adhesion, and therefore the legislator intervenes to protect the weaker party, who is usually the user of air transport, typically the shipper. The legislator intervenes to remove abusive clauses that the beneficiary of the transport service cannot refuse, i.e., it eliminates these unfair terms, which are only regarded as abusive at the time of contract formation and before the occurrence of damage, because the user is unable to reject them in order to benefit from the transport service.

However, if such clauses are established after the occurrence of the damage, they are considered valid, because the contracting party is able to refuse them. Nevertheless, these post-damage agreements are subject, as regards their validity, to the applicable national law.”

Conclusion:

The sanction resulting from the air carrier’s breach of its obligations in cargo transport is compensation for the damage caused. The Warsaw Convention of 1929 established this compensation through a maximum limit for liability. This system applies only when essential conditions are met, such as the international nature of the transport, and it is not permissible to reduce the maximum amount of compensation. However, it is possible to increase this amount, whether by agreement or by law.

Nevertheless, the air carrier may avoid liability through exemption or limitation agreements, provided that it has taken all necessary measures to avoid the damage, or in other cases such as force majeure. However, these agreements may be declared void within the scope defined by the Warsaw Convention of 1929 and its amending protocols.

Conclusion

In conclusion, the liability of the air carrier for cargo represents a vital aspect of air transport operations. The carrier’s liability arises when it breaches its obligations, mainly the duty to ensure the safety of goods and checked baggage. Once these obligations are not respected, the carrier must bear the legal consequences imposed by national law and international conventions, primarily compensation for the damage caused to the goods under its responsibility.

This compensation may be reduced or extinguished in certain cases provided for in international treaties and conventions. The Algerian legislator has relatively succeeded in balancing domestic law and international conventions in regulating the specific nature of air carrier liability for cargo. This is reflected at the international level in Algeria’s ratification of the Warsaw Convention of 1929 on the Unification of Certain Rules Relating to International Carriage by Air and the Hague Protocol of 1955 amending it.

At the domestic level, Algerian legislation has regulated air carrier liability for cargo through several legal texts, the most important of which include:

Law No. 166-64 dated 8 June 1964 relating to air services, and Law No. 06-98 dated 27 June 1998 laying down the general rules relating to civil aviation (1998), together with its amendments, including Law No. 05-2000 (2000), Ordinance No. 10-03 dated 13 August 2003

amending and supplementing Law 06-98 on the general rules of civil aviation, Law No. 02-08 dated 25 January 2008 amending and supplementing Law 06-98, and Law No. 14-15 dated 15 June 2015 amending Law 06-98 establishing the general rules of Algerian civil aviation.

Results:

Based on the above, we reached the following conclusions:

- The liability system of the air carrier for cargo has a dual nature: it falls under public order rules within the minimum limits of liability and under private rules within the maximum limits of liability.
- Algeria is a shipper country rather than a carrier country, which explains its ratification of the Warsaw Convention of 1929 on the Unification of Certain Rules Relating to International Carriage by Air and the Hague Protocol of 1955 amending it only.
- The amount of compensation under the Warsaw Convention of 1929 is fixed at 250 French francs per kilogram for damage to cargo.

- International conventions allow an increase in the maximum compensation limit, either through contractual increase or legal increase.
- The liability of the air carrier for cargo is characterized by a protective nature aimed at safeguarding shippers from carrier abuse.
- The rules governing air carrier liability for cargo are mandatory rules that cannot be derogated from by agreement.
- The liability of the air carrier for cargo under the Warsaw Convention of 1929 is contractual in nature.
- In Algerian legislation, air carrier liability is an implied contractual liability that is not expressly defined by the legislator, and its basis is the will of the parties, which is regulated to prevent one party from dominating the other. This reflects the mandatory nature of these rules.
- The main obligation of the air carrier for cargo is to ensure the safety of goods and checked baggage and their delivery within the agreed time.

Recommendations:

Based on the above, we reached the following recommendations:

- Algeria should ratify the Montreal Convention of 1999, regardless of being a shipper state, as it applies conflict-of-law rules in international aviation disputes, which may lead to the indirect application of the law of another state that has ratified the conventions to which Algeria is also a party.
- The latest amendment to Law 06-98 on the general rules relating to civil aviation dates back to 2015. Given the rapid development of the aviation sector, the Algerian legislator should address existing shortcomings by amending the law and enacting new legislation.
- The Algerian legislator should reconsider the amount of compensation fixed for cargo, since compensation is based on the weight of goods. In cases where goods are electronic (such as mobile phones), compensation based on weight is not fair.
- The legislator should reconsider the time frame for calculating delay, which runs from the moment the carrier receives the goods until their delivery at the agreed time.

- The legislator should define clearly how the limitation period is calculated, instead of leaving it to the law of the court seized of the dispute, as this may lead to inconsistency between courts.
- The legislator should explicitly state that the liability of the air carrier for cargo is a contractual liability based on presumed fault.