



Civil Liability of Air carrier in Delays

Samira Mazaheri ^{1,a}, Zeinab Basiri ^b

^a Department of Law, Faculty of Humanities Science, University of Isfahan, Isfahan, Iran

^b Department of Law, Faculty of Humanities Science, Shiraz University, Shiraz, Iran

Received: 17 April 2018

Accepted: 15 May 2018

Published: 13 June 2018

Abstract

The civil liability of air carrier can be assessed in international and national levels. However, in international flights, in accordance with Article 19 of the Warsaw and Montreal Conventions, "the air carrier is liable for damages caused by delays in the carriage of passengers or cargo". However, none of the conventions has provided a definite definition of delay and has not addressed the issue of what kind of damages could be received for delays. Also, in the national level, the Iranian legislator's position on delays in national flights seems to be under criticism, and it is not clear what regulations are in this regard. Therefore, in principle, we must comply with the general rules. In addition, lack of specific regulations in this area has made it difficult for passengers to demand proper services in a delay. An issue that is clearly against the rights of more and more air passengers. The present paper analyzes the status of Iranian legislator on national flights while analyzing the concept of delays and damages in international jurisprudence and legal doctrine, and provides an appropriate solution in the light of a comparative study.

Keywords: Warsaw Convention, Montreal Convention, Delay, Claimed Damages, National and International Flights

How to cite the article:

S. Mazaheri, Z. Basiri, *Civil Liability of Air carrier in Delays*, *J. Hum. Ins.* 2018; 2(2): 67-75, DOI: 10.22034/jhi.2018.64941

©2018 The Authors. This is an open access article under the CC BY license

1. Introduction

Speed is the most important factor in the preference of air carrier over other ways (via rail, road and sea). This is the reason why delays in this carrier is more dramatic and creates more legal issues. Delay in passenger or goods can be due to various reasons such as inability to book, overselling tickets, late departure from the start, flight suspension, as well as delays affecting cargo (including incapacity in placing cargo or loads on the aircraft, incapacity or inability to dispose goods or cargo, and not delivering documents accompanying goods or cargo that are required for regular delivery) [1]. Therefore, in these cases, the air carrier is, in principle, responsible for damages due to delay in passenger, cargo or goods.

Also, the liability is so important that, in addition to the conventions in private international law, IATA has also laid down regulations on delays and the resulting effects, according to which the agent is obliged to do his/her best to carry passengers and

cargo and is liable for the breach of this obligation [2]. However, the rules governing the carrier for delays are different in national and international flights and should be discussed separately. In fact, the applicable law depends on whether it is international or foreign flights, since international flights are governed by the Warsaw and Montreal Conventions, and many countries, including Iran, have signed and acceded to them. Also, according to the Warsaw Convention, a carrier is international when the start and destination are in one of the territories of the other parties to the treaty. In addition, the internal part of an international flight is also supervised by the Warsaw Convention (3). For example, a person who wants to fly to New York from Memphis in the United States and the plane he plans to ride, departs from London, but stays in Memphis and then flies to New York, the flight is international since the start of the flight was outside the United States although the person travels in the United States [3]. At any rate, as noted, the civil liability of air carrier in delays is subject to

¹ Corresponding author email: s.mazaherisade@gmail.com

conventions. However, due to the general nature of laws available about the concept of delay and damage, the judicial process and legal doctrine is significant, as, by studying Judicial laws of other countries, in particular the US legal system, we can provide a relatively clear-cut view of the concept of delays and claimed damages in the situation. However, in relation to national flights, different countries regulations regarding the civil liability of air carriers may vary and follow a different legal system. In the meantime, Iran's legal system, with a critical approach, has not precisely identified the status of passengers in delays. It does not specify which mechanisms are functional. Therefore, in principle, in order to lodge a lawsuit against an air carrier, it should be subject to the general rules of civil liability arising out of or in violation of the contract [4].

1.1 Liability of air carrier on international flights

According to Article 19 of the Warsaw Convention on Civil Liability of air carrier on international flights "The carrier is responsible for damages caused by delay in the carriage of passengers, cargo or goods". It is worth mentioning that this clause has remained unchanged in subsequent treaties, such as the 1955 Hague Protocol and the 1975 Montreal Protocol. The Montreal Convention of 1999, in the same way as in Article 19 itself, repeats the same regulation as the Warsaw Convention. Therefore, the key points contained in the two conventions are the concept of delay, assessment of damages and proof of the causal relationship that involves case-by-case analysis [5-7].

1.2 Concept of delay

As noted, According to Article 19 of Warsaw and Montreal contracts, air carrier is liable for the damages due to delay. Anyway, both Warsaw and Montreal conventions have not defined delay. Therefore, some legal authors have referred to common law regulation to define it: "If we find the answer by the common law, the air carrier is only responsible for Carrier in a reasonable time. Therefore, delay mean incapability to complete Carrier in a reasonable time. According to the existing laws defining delay based on the common law, the prerequisite for Carrier carrier liability for delay was its "unreasonableness". This law was enacted in the Panalpina International Transport Ltd v Denzil Underwear Ltd [1981] lawsuit. In this case, according to pending court, delay in delivering goods which led to losing Christmas business provided the condition for an unreasonable delay. Therefore, the Carrier carrier is liable for damages . It seems that since air transportation is generally governed by contractual relationships, we should always have a careful look at the provisions of the

transportation agreement - whether it is set for departure or arrival [8-9].

Therefore, in transferring passengers, paper ticket, or electronic ticket implies the existence of an explicit contract stating the time of arrival and departure on the ticket indicating the start and end of the trip and, in accordance with the contract of carriage of the airline operator, has agreed to carry the goods at the time of appointment (between time inserted in the ticket). As a result, any irregular change occurring from the time of arrival and departure in the contract (or ticket) can be considered a delay [10].

In other words, the carrier carrier determine the carry contract duration and agrees to do the carrying in due time. By determining the time, the passenger expects air carrier to comply with the contract and the carrier will also be liable for being incapable in complying with the agreed time (unreasonable change from the determined time).

Therefore, according to Article 19 of the Warsaw and Montreal convention, the carrier is liable for damages due to delay in air transportation. In fact, this is related to the time in which the carrier can be taken as responsible according to the contract. However, the question is that what the unreasonable time range? There are three theories regarding that [11-16].

1.2.1. The first theory

The first theory is based on Goedhuis Theory. He concluded that the statement in the Article 19 is only related to those delays tolerated by the passenger or cargo in air transportation. In other words, the liability of carrier is delay is only related to the airplane delay in destination not leaving the start point or delays due to delivering cargo to the passenger in the destination. This lawyer argues that Article 19 has appointed a constraint for liability duration. According to this interpretation, only those points are included during which the airplane is forced to land in another airport due to bad weather. Therefore, cases where the day occurred before airplanes take off are exception. For verifying his idea, he refers to the Bart v British West Indian Airways, [1967] 1 Lloyd's Rep. 239 case. In this case, delay was due to airplane loading. However, the carrier was not known as responsible for damages incurred . In the StéNationale Air France v Sté Arlab 1985 RFDA 478 (Aix-En-Provence 29 Nov 1983) case, there was no liability for the carrier despite of there weeks of delay in load dump [17-19].

The above idea is under criticism as it frees the carrier most of the times. In Russell Jones v Britannia Airways Ltd, Case No.CH 714259 case, the carrier was known to be liable for delay as the proposed theory led to unacceptable limitation of carrier liability [20].

1.2.2. *Second theory*

According to other lawyers, the carrier is liable for delay even if the boarding process is not started. In this way, if a passenger is entered to the airport with the intention for flight and the flight is announced to be delayed before he/she confirms the ticket and deliver the cargo, the carrier is liable for damages incurred to the passenger due to this delay. This theory has a problem. There is an accepted view that the process boarding starts when the passenger confirms his/her ticket and delivers the cargo. However, based on the second idea, by the presence of passenger in the airport and before confirming the ticket, the boarding process and the liability have started [21].

1.2.3. *The third theory*

The third theory argues that Article 19 of Warsaw and Montreal conventions should be considered along with Articles 17, 18, 22 and 24 of Warsaw convention. Regarding the registered cargo, Article 18 (4) and (5) of Warsaw convention (Articles 18 (3) and (4) Montreal) define air transportation duration as: "the time in which the cargo is delivered to the carrier regardless of being within the airplane or not or the airplane land in a different destination. However, the carry time through land and sea out of the airport is not considered as the carrying time". According to above regulation, air transportation starts when the cargo enters the airport and is ready to load after doing the procedure. Therefore, according to the third theory, when the cargo has been registered in the airport and is ready to load, delay is considered [22].

However, Article 19 of Warsaw convention is related to passengers' delay. Anyway, it does not give an additional explicit definition of air transportation time like Article 18. By the way, according to Article 18 of Montreal convention, it can be interpreted that the air carrier liability starts when the passenger is ready to board after doing the formalities (checking in the ticket, Visa and delivering the cargo) till they get down. Therefore, regarding Article 19, delay is considered in this time. The question is that whether Article 19 of Warsaw convention related to cargo and goods can be used for the passengers. It seems that the answer is a yes as there is no difference between the cargo and the passenger and Article 19 has mentioned both of them. This theory is confirmed by the *Brunwasser v. Trans World Airlines Inc.* case when the US court argued that the definition of air transportation in Article 18 can be used in Article 19 regarding the passengers [23].

Here, two issues are very important. First, "lack of time" statement used by some air carriers to free themselves from deliver the passenger or cargo in

due time. In this regard, note 9 of the IATA Essential Documents on International Air Carrier Liability, 2nd ed, January 2004 argues that: "the times shown in the timetable are not guaranteed and part of contract".

Therefore, the air carrier is not required to determine a time for completing transportation. In fact, IATA removes the time element from the contract to deprive passenger from the right to expect services in due time.

However, it seems that IATA regulations are contrary to Article 23 of Warsaw convention and Articles 19 and 26 of Montreal. This is because IATA intends to free the air carrier from delay liability which is prohibited in contractual system. For example, the German court argued that Article 9 of IATA regulations is invalid and is against Article 23. Article 23 has clearly showed that every statement that reduces the air carrier liability is banned.

The second point is that in case of cargo carriage, delivery data is not pointed in the contract. The question here is that how we can estimate the delay.

Regarding this question, the France appellate court, in *Peronny v. Ste. Ethiopian Airlines 1975* case, argued that in cases when the delivery time is not determined in the Bill of lading, it should be interpreted based on the parties' expectations. In fact, the Paris appellate court has determined delay based on the expectations of passenger or carrier. Therefore, the court considered reasonable expectation as the criteria for vote.

The "reasonable criteria" used in the France law can be used when there is a contract without time statement. These expectations are usually estimated based on the carrier advertisement or previous times used by them.

2. **Estimating the incurred damages**

The second condition for civil liability of air carrier is incurring damages to other parties. As the Warsaw and Montreal conventions have been silent about delay damages, the issue should be examined by a verified court (1-2-1). The other issue which is important in damages is the threshold of damages (2-2-1).

2.1. *Incurring damages*

The necessity of civil liability of air carrier is a compensable damage. What is important in air transportation delay is what are considered as damages and losses? At the first look, the damages are 1. eating costs, 2. temporary accommodation, 3. Calling costs, 4. Lost or inaccessible cargo, 5. emotional and psychological pressure (anxiety, boredom, hopelessness), 6. Losing the income or job opportunities, 7. problems of staying in a hotel, 7. Being defrauded due to waiting and 9. Punitive

damage. However, the courts are different on what they consider as damage.

For example, in *Harpalani v. Air India* 19 Avi.17887, 634 F.Supp. 797 (D.C. 111. 1986), the sentence was only issued for losses not punitive damages even in the case of conscious misbehavior of Article 19. In *Barrett v. United Airlines, Inc.* 697 P.2d 408 (1984) case, it was argued that Article 19 is not a reason for lawsuit regarding emotional and psychological damages to the passenger. In *Lee V. American Airlines Inc*, No. 03-10178., January 14, 2004 - US 5th Circuit case, the US appellate court lawsuit for damage due to losing holiday is only related to psychological pressure and cannot be claimed according to the convention system. By the way, in France law, damage for cargo delay includes "ethical damages". In *Tarar v. Pakistan International Airlines* (DC Texas, 1982) 554 F.Supp. 471 case, the plaintiff has a contract to carry his husband cargo after his funeral. However, the cargo has a delay for several days. The court argued that the emotional and psychological damages tolerated by the late family should be compensated.

As it is seen, in most of cases of Article 19, the courts concluded that compensation of damage is possible in delays provided that the plaintiff can prove the fact the damages were due to delays. In general, damages due to delays can be put into three groups (economic, emotional-psychological and Subjunctive). In every case that there is a direct relationship between delay and damage, the damage is compensable based on the convention. In fact, the damages sentenced by the courts include cost of hotel accommodations, transfer from the airport, eating costs, clothes and other necessary costs. However, the damages for losing holidays and things related to that is compensable based on different conditions. Also, the psychological damages are only compensable when they are due to physical damages as in *hrlich vs America Airlines*, Docket No. 02-9462., United States Court of Appeals, Second Circuit. Decided on March 8, 2004 case. The damages due to losses which include investment opportunities are only compensable when this damage is the predictable result of claimed violations. As a result, those unpredictable subjunctive damages cannot be claimed. As an example, the subjunctive damage has been approved in the *Robert-Houdin v. Panair do Brasi*, (Paris, 9 July 1960), (1961) 24 RGA 285 case. According to this case, a passenger was not able to participate in a show which may has been profitable for him/her. The court argued that the ticket to reach destination and the assumed profits of the show should be compensated for him/her.

Or, in the case of *Iran Air c. Cie. Generale de Geophysique* 1975 RFDA 64 (T.G.I. Paris, 26 June 1973), the court sentenced compensation of damages incurred to experts which could not

complete their project due to delay in delivering equipment. In this case of *Hill v. United Airlines* (1982), The US court sentenced that delay in delivering equipment led to subjunctive damage to the employer. In fact, the authority considered subjunctive damage as the loss of anticipatory benefits. In other words, if the fly was not delayed, the passenger could have the anticipatory income. Therefore, as mentioned accurately, in estimating the incurred damages, the courts should consider two types of damages: 1. The damages which are similar for all passengers, i.e. compensation of damage as standard care and help to passengers, 2. Individual damage, i.e. a damage which is decided based on the conditions of that case. In the case of *Igwe v. Northwest Airlines Civil Action No. H-05-1423*, United States District Court, S.D.

Texas, Houston Division, January 4, 2007, the court argued that the passenger ignorance does not put any liability on the carrier shoulder and one example of these ignorance is the passenger incapability to complete formalities in due time (delivering the cargo).

2.2. Size and threshold of damage

Article 19 of the mentioned conventions did not appoint how much damage should be paid for delay. Anyway, in a general analysis, the damages can be put into two categories: damages due to individuals delay and damages due to cargo delay.

2.2.1. Damages due to individual delay

According to paragraph one of Article 22 of Montreal convention, the indemnity which should be paid by the air carrier to a passenger is equal to 4150 SDR. The question here is that how the passenger can ask for damages more than what is determined in the conventions. Except for existing performance guarantee in Paragraph 3 (paying indemnity equal to the value of passenger cargo which is claimed by the passenger before the flight) and Paragraph 4 (estimating damages on the cargo, the weight of cargo mentioned in Bill of lading) of Article 21, the general rule is that the passenger can claim the maximum indemnity mentioned by the conventions if the carrier has had an intentional delay which is called Wilful misconduct or the delay was due to breach of obligations by the carrier, E.X. preventing the passenger to board the plane.

According to paragraph 1 of Article 25 (Warsaw convention) and paragraph 5 of Article 22 (Montreal convention), if the passenger prove that the damages incurred were due to carrier misconduct, he/she can ask for the maximum indemnity. For example, in the *Ruller frères et al c.air algerie* 1956 RFDA case, the carrier was liable for transporting cargo from France to London. The pilot stayed one night in Paris without asking the cargo owner permission. This led to damages to

fruits. According to the court, these damages were considered as a wishful misconduct. Also, in the *ohen v. Varig Airlines*, Appellate Division of the Supreme Court of the State of New York, First Department, May 2, 1978. case, one of the company employees assured the passengers that their cargo is in its way. However, when they got off the plane, the cargos have been gotten off from the plane and the employee provided wrong information. The court voted that these wrong information were given intentionally and is an example of wishful misconduct. Therefore, as it can be seen, in all these cases, indemnity limit has not been applied due to wishful misconduct and the plaintiff can ask for the maximum indemnity. By the way, in most of these cases, it is not possible for the passengers to prove carrier wishful misconduct to ask for the maximum indemnity. Furthermore, in Article 25, it is argued that the plaintiff can ask for more than what is mentioned in the conventions.

According to this Article, in contract, the air carrier can argue that there is no liability beyond the conventions and agreement in the contract can pave the way for overcoming the liability limitations .

Second. Preventing the passenger boarding as the carrier compliance with the contract

The delay imposed on the air passenger is due to not boarding the plane. This, sometimes, happens when the carrier has sold more tickets than the plane capacity and because the passenger did not reach the airport at the right time or was not able to confirm his previous reservation, he/she missed the flight.

It is very common that the air transportation companies sell more tickets in the ways when there is a high chance of cancelling the reservation or missing the plane. The accepted rule is that the air carrier should pay the indemnity when it cannot board the passenger unless it has announced the information to the passenger long before that.

For example, in the *runwasser v. Trans World Airlines* (1981) case, it was confirmed that cancelling the flights months before is not supported by the convention as it has not occurred during transportation. This case is not related to over-selling the tickets as the carrier has informed the passengers long before. However, it should be noted that in the case of over-selling the tickets, delay is not the case as in the case of *Oparaji v. Virgin Atlantic Airways*, Case No. 04-CV-1554 (FB). United States District

Court, E.D. New York. September 25, 2006, the case argued that the passengers are not liable for over-selling the tickets and it is considered as a breach of contract. In the *Mullaney v. Delta Air Lines*, Case no. 1:08-cv-07324-CM in the New York Southern District Court 2009, the same sentence was given.

2.2.2. Damage related to cargo delay

According to the first sentence of Paragraph 2 of Article 22 of Montreal convention, the carrier is liable for damage, miss and break down of things up to 1000 SDR regarding the cargo transportation. However, in some cases, there are limitations in paying indemnity. First; in line with Article 25, we can put some conditions in the contract according to which the carrier is charged more than the damages mentioned in the convention. Second; According to the bill estimating the cargo value, higher indemnity can be required from the carrier to equal the cargo value. Third; the third and the last strategy to overcome limitations in carrier liability is that the carrier causes damage to the cargo wishfully. However, it is difficult to prove.

3 Proof of causality

Another civil liability of air carrier is proving causality between delay and incurred damages to the passenger or cargo. According to some lawyers, as the Warsaw and Montreal conventions have assumed the fault theory , the passenger or cargo owner can ask for indemnity proving the relationship between delay and damages as it is assumed that the damages to the cargo is the liability and fault of carrier.

However, according to the first paragraph of Article 20 of Warsaw convention and Article 19 of Montreal convention, if the air carrier can prove that it has taken all the necessary measures to prevent damage or it was impossible for it to do these measures, it is not liable for the damage anymore. For example, when the airline employees go on a strike or there are problems on equipment, the carrier is usually considered as liable. For instance, when the strike starts before the contract, the carrier is liable. This occurred in *Air France c. Ste arlab et ste arduini RFDA*, 1985 case. In *McMurray v. Capitol International Airways*; New York City Court, 1980, the court concluded that the carrier has not done his best for the passengers to use another flight. Also, if the carrier prove that the delay was due to wrong statements in the Bill of lading, there is no liability (*Tanneries de Lutece c. Air france 1966 RFDA 105* cited in *Federico N. Videla Escalada*,

Aeronautical Law, Netherlands, Stijhoff and Nordhoff Publisher, 1979, p. 822.). The carrier can also prove that the delay was due to conditions which were not under its control including weather, air traffic, unpredictable engine problems or terrorist activities. However, the carrier should show that it has taken all the necessary measures. In the case of weather, the predictions should be provided and in the case of engine broke down, the experts should prove that. In the *Martel c. Cie Air*

Inter 1981 RFDA. Case, the carrier was not known as liable for engine broke down.

But, the main change in the Montreal convention is that it is not necessary for the carrier to prove that it has taken all the necessary measures, and only, it should prove that all the “reasonable necessary measures” were taken.

In the *Chisholm v. British European Airways* case, the carrier is no liable for personal damages to the passenger when he/she left his/her seat at the time of chaos as the carrier employee warned the passenger not to leave your seat and fasten the seat belt. Therefore, care measures were taken. On the contrary, in the *goldman v. Thai Airways International Ltd* case, it is sentenced that “all the necessary measures” are “all the reasonable measures”. It is the same of the US, Germany and Canada.

The question is that what are “reasonable measures”. It is generally accepted that the carrier should follow the highest standards on general security. According to some authors, these standards are all the ICAO and European Federation regulations and those air carriers which are not capable of following them, can not use Article 19 and 20 of Warsaw and Montreal conventions to evade liability . According to the court sentence in the case of September 11, reasonable measures did not mean all the necessary measures to stop loss as if all these measures were taken, that accident would not happen . As a result , according to the court sentence in *Manufacturers Hanover Trust company, plaintiff, v. Alitalia Airlines, United States District Court, 1977* , the air carrier should prove that it has taken all necessary measures to avoid loss meaning that the reasonable measures were followed.

By the way, it is believed that changing the phrase in Article 19 of Warsaw convention which happened in the Montreal convention was good for the carriers even though the requirements of Article 19 are still strict. Changing the Article regarding the proof documents on excuses for allegations has helped the carrier a lot. In fact, “reasonable” leaves more space for discussion than the “necessary” and by replacing them, the carrier gain the upper hand to prove that it has taken all the measures to avoid delay . However, the situation will differ for the carrier when it proves that it has taken all the measures to avoid damage. Here, “necessary” is justifiable.

3.1 Liability of air transport for national flights

The Warsaw Convention or Montreal Convention will not apply if the air transport is wholly national, such that the destination is not in a foreign country. Therefore, based on the rule of conflict resolution, in cases where one of the parties to dispute is not a member of the Convention, laws of the intended

country will apply. For instance, in the case of English against the Switzerland Air Company, the Warsaw Convention was not applied, because only Switzerland had ratified the Convention, and Turkey had no such provisions. Consequently, there was no international transport and the case must be investigated in accordance with the conflict resolution rule. Keeping this in mind, the present article first deals with the position of countries regarding the liability of air transport for national flights, and then, the author criticized position of the Iranian legal system in this regard.

3.2 Position of internal law of countries regarding national flights

Referring to national laws of the countries reveals that generally each country has chosen one of the following options: 1. Some national rules put into effect the compensation for airplane accidents and choose unity of the legal system in their land 2. Another group of countries, make their national flights in general or at least regarding the extent of transport liability subject to the provisions of international conventions, and preferred unity of the internal and external legal system in the field of air transport. 3. Considering specific characteristics of air transport, some countries have laid down a special law on the transport liability in national flights.

For instance, the United States has made national flights subject to the internal system, as based on the US Federal Rules, on each flight with a giant airplane , liability shall not be limited to damages caused directly by delay or loss of passengers' cargo . Actually, the liability is absolute in this mode. Thus, whenever the rules of conflict resolution consider the Federal Law of the United States dominating the conflict, in the event of a delay, the air carrier will be liable in any case, and the proof for not being guilty and observing the reasonable measures will not have any effects on its liability. Also, the European Parliament and the European Union / EU Council Regulation by approving the Regulation No. 261/2004, dd. February 11, 2004 particularly dealt with the general provisions on compensation and assistance to travelers in specific cases related to "preventing boarding, cancellation or long-delayed flights ."

3.3 The position of the Iranian law system regarding national flights

Here, the question is that what is the position of Iranian law regarding the delay in national flights and what system does it follow. In this regard, the law on amendment of legal Act for determination of extent of the liability of Iranian national airline in the national flights approved on October 8, 1981 specified position of Iranian law concerning the delays, such that limits of the liability of the Iranian

national airline for passengers, as well as their load and cargo on national flights, are subject to the liability of the company for international flights. In other words, the Iranian legal system has previously accepted the national and international legal system in the field of air transport, and based on the above law, and in cases where the airline carrier commits a delay in carrying passengers or goods, it should be treated in accordance with the Warsaw Convention; A subject discussed in detail in the previous section.

By passing the law for "determining the liability of Iranian airline companies approved on August 15, 2012", the Iranian legislator made changes regarding the liability of airline companies which seems notable. Based on the first Article of this law, the international flights are in accordance with the Warsaw Convention on 12 October 1929 and the amended Protocol of Act on September 28, 1955. However, the legal system governing national flights stated that for the cargo of passengers, it is only in accordance with the Islamic Penal Code and regarding the transport of goods and cargo, it is limited to the liability of the Warsaw Convention and the amended Protocols of the Act . The question here now is that how the delay on national flights should be treated? Will it be in accordance with the Islamic Penal Code? In fact, what regulation and mechanism do we have for delaying in the carriage of cargo in the Islamic Penal Code? In passing the new law, the legislator focuses solely on dealing with damages and personal damages to passengers on national flights in accordance with the legal system of blood money and rules of Warsaw Convention is not applied. However, this is regardless of the fact that the air carrier liability includes physical damages (damage, death), and it is obvious that the Islamic Penal Code lacks any verdict to apply to the delayed situation. However, in regard with the submitted criticism, it may be said that cases in delay may result in physical damage to individuals. In the investigation made in the first part, it was found that the damages caused to people by delay were mainly due to other issues. Therefore, the subject is specially out of scope of discussion. It seems that the best answer to the position of legislator in this regard can be attributed to the verdict stipulated in the law in 2012 which disregards the delay cases, since the legislator, in this regard, intends to follow the rules stipulated in the Islamic Penal Code for the national flights concerning the physical damages and death. However, despite the above justification, still this criticism exists to the legislator, which, in the first Article, it has been spoken such that as if delay cases were to be sought in the Islamic Penal Code as well. Besides the ambiguity in the process of legislation, investigations of authors indicated that air carrier

companies in Iran, in principle, are not liable for national flights. Particularly, when it comes to declaring that the flight is delayed or even canceled. This makes non-resident passengers to spend the night in difficult conditions at the airport or stay in a hotel that requires additional charges and damage if the flight is delayed or canceled. However, air companies will not be held liable for such damages to these groups of passengers. Therefore, considering the numerous problems existing in the airline industry in Iran, the delay in air flight does not seem to be a strange problem, since it is not clear exactly what kind of delays will be compensated and, secondly, in the event of delays, what services can be provided, i.e. if there is a delay in national flights, what is the legal mechanism to deal with it? In response to the issue in national law, it should be noted that, although on national flights, the applicable law is ambiguous, but it can be examined and analyzed on the basis of general rules, explaining that the passenger has a flight ticket, which indicate a contract between the transporter and the passenger.

Therefore, in a delay situation, the carrier delays in fulfilling his obligations, which is a kind of partial violation of the contract and should consider the damages in accordance with the present general rules . On this occasion, in order to issue a verdict on damages caused by flight delay, according to the views of national lawyers and the Articles of civil law in damages caused by non-fulfillment of obligations, four elements shall be assessed by the judge: 1 - The due date; 2 - Non-fulfillment of the obligation; 3 - the loss; 4. Verification of a causal relationship between non-fulfillment of obligations and losses .

Considering the first issue, the due time for the fulfillment of the commitment is indicated in the flight ticket and in case of delay on behalf of the company, delay is realized and the passenger can claim damages incurred in accordance with other conditions. But the notable point in here is that the due time in some cases plays a decisive role in the commitment such that non-fulfillment of the obligation at that time will be deemed as non-fulfillment. Thus, if the flight is delayed, the contract is cancelled and the passenger can claim damages for non-fulfillment of the obligation, including the money stated in the ticket and other damages incurred. However, in verification of what kind of delay in national flight is the non-fulfillment of a commitment, attention should, in principle, be paid to the parties to the contract. In this way, if flight time is an obligation, then its fulfillment will be deemed as non-fulfillment of the commitment. For instance, if the traveler intends to attend a particular religious, sporting or scientific ceremony at a certain time, and punctuality is useful for them,

the delay will be deemed as the non-fulfillment of the obligation.

The second investigable issue is the non-fulfillment of the commitment by the company, which in the present discussion was referred to as a partial non-fulfillment of the contract. Obviously, the occurrence of delay, merely indicates non-fulfillment of the obligation, and the delay itself is considered a contractual fault. Unless the agent can, in accordance with the general rules, attribute the delay to external factors and / or force major, and only by proving this, it can avoid the compensation for the damage. In accordance with European regulations, in the event of delay, the air transport is deemed to be liable in any event unless it proves that exceptional circumstances such as natural forces (storm, flood, etc.) have caused flight delays. Therefore, European regulations for flights less than or equal to 1500 kilometers, a delay of two hours or more, and in flights over the territories of the European Community of more than 1500 kilometers and the rest of the flights between 1500 and 3500 kilometers a delay of three hours or more, and in flights not covering the first two conditions, a delay of four hours or more is compensable .

The loss is third issue that has to be verified regarding the liability of the air transport for national flights. In relation to the definition of a loss, it is stated that anything lost assessable by money which damage to financial rights is a financial loss . Consequently, it would seem that any material, moral and physical losses, including lack of benefit, would be considered to be a loss , i.e. the loss has a customary meaning , wherever the customs deem the flight delay to be a loss, the damage can be requested from the court [23].

Therefore, the nature of the losses incurred to the passengers should be compensated regardless of losses incurred in the form of delay fees provided (such as the cost of accommodation and food, etc.), and are investigated in two dimensions: 1. material damage, and 2. Spiritual damage. Considering the material damage in the delay situation, often damages are considered in the mind that leads to non-benefit. For instance, in the case of delayed flight, there are people who lose their opportunity to take part in a competition or a test or a bidding process etc. due to delays.

As stated above, regarding the spiritual damage, despite some objections in the foreign judicial process in delay cases, spiritual damage is claimable with the proof of some circumstances. Consequently, based on the definitions provided for damage, in any case where the public opinion considers the psychological pains as a loss, the court may order compensation. Just as participation in religious ceremonies at certain times or the suffering of travelers as a result of flight delays can be considered as damage. Of course, a petitioner can

raise spiritual damages by contractual or non-contractual civil liability considering that in the non-contractual civil lawsuit . First, the element of fault must be proven contrary to contractual liability . Although today's, the concept of fault has been subject to many modifications, and the social and conventional concept of it is considered . Second, the contractual limits should also be considered [24].

However, another important question raised here is "what standard exists for assessing the damage caused by the delay? In response to the question raised, and finally, the prerequisite for all civil liability lawsuit is the existence of the causal relationship between the harmful act (delay) and loss where loss demand due to delay will be possible through proving it.

Also, what is important in delays is providing appropriate services to the passenger which is ignored in Iranian law or is very rare. According to European regulations, in delays, services provided to the passenger by the carrier . For example, According to Article 9 of European regulation, the passengers will receive the following services for free: 1. Reasonable food and drinks during the time of delay, 2. Reserving a hotel room when there is an expectation for delays of longer than one night. Moreover, Two phone calls, message, Fax or Email are free . It should be noted that according to sentence given by the European Court of Justice, natural events such as Volcano in Iceland and its cloud in 2010 and stopped the flights does not make the carriers liable. By the way, even these situations cannot stop carriers from providing services to the passengers. According to the court, the air carriers should provide services to the passengers based on Articles 5 and 8 and these services are not limited based on money and time . Also, other cases which are compensable in European regulation is delays of more than five hours based on which the passengers can give back their tickets and receive their money . Therefore, again, it seems that the Iranian law system should revise this issue too.

4. Conclusion

Regarding civil liability of air carrier in delays, two positions should be separated: national and international flights. Regarding international flights, Warsaw and Montreal conventions consider the air carrier responsible for damages. According to law doctrine, delay is a condition in which there is a contract between the parties (ticket or Bill) where the carrier accepted to deliver the passenger and goods in reasonable due time and it will be liable in the case of violating the contract. These damages can include economic, emotional/psychological and subjective damages. However, there should be a direct link between delay and the damage incurred. On the other hand, it is not very difficult for the

passenger and cargo owner to prove this while the carrier should prove that it has taken all necessary measures regarding the delay.

In national flights, different countries take different positions. For example, some have accepted the unity of national and international liability and others have taken special measures. However, Iranian law system position is vague. So, despite the vagueness of laws in compensating damages, the passenger should strive for a lawsuit in the case of delay and damages which is in line with his/her civil liability. As a result, the passenger may be able to receive indemnity considering the contractual limitations.

Also, in delay, the passengers should receive appropriate services which is lacking in the Iranian law system. Therefore, first, it is necessary to the legislator to change the national laws and take explicit position on the cases of delay in flights in Iran. Second, to follow the rights of air passengers, it should set up laws like the European Federation to improve services to the passengers.

References

1. Drion, H., *Limitation of Liabilities in International Air Law*, Proef-schrift Leiden; Martinus Nijhoff, Gravenhage, 1954, p.181.
2. Henrietta Philepin, Isabella, et al, *An Introduction to Air Law*, 8th Revised Edition, Netherlands, Kluwer Law International, 2008, p.136.
3. Szakal, Arpad, *Air Carrier's Liability in Cases of Delay*, p.3. available at: <http://www.aviationlaw.eu/wp/wp-content/uploads/2013/09/Air-Carriers-Liability-inCases-of-Delay.pdf>. Date Accessed: 06/20/2014.
4. Giaschi, Christopher J., *An Overview and a Summary of Recent Developments, Presented to the Marine Insurance Association of British Columbia on 13 November 2003*, available at: <http://www.admiraltylaw.com/papers/Aircarrierag.e.pdf>. P.211. Date Accessed: 07/16/2014.
5. Miller, Georgette, *Liability in international air transport*, Deventer: Kluwer Law International, 1977,159-160.
6. IATA Essential Documents on International Air Carrier Liability, 2nd ed, January 2004.
7. Syllabus (Adv.) L.L.M Programme in International Air and Space Law, International Air and Space Law, University of Leiden, 2003, p.123.
8. Goldhirsch, Lawrence (Editor), *The Warsaw Convention Annotated: A Legal Handbook*, Hague: Kluwer Law International, 2000, p.100.
9. Raffaele, Steven, *Hurry Up And Wait: Air Carrier Liability For Flight Delays*, SMU Air Law Symposium, February, 2008, p.21
10. Giemulla, Elmar; & Ronald Schmid (eds), *Montreal Convention Commentary*, The Hague, Kluwer Law International, 2006, p.2.
11. Diederiks-Verschoor, I.H.Ph. "The Liability for Delay in Air Transport", *Air and Space Law*, Vol.26, No.6, 2001, p.306.
12. Fakhari Amir hossein & Mohamadzade, Moslem, "the elements of contractual liability of air carrier regarding the passenger in the Warsaw system and Montreal convention 1999" *Islamic religion and law*, 8 (1), Spring and Summer of 2007.
13. Elmar Giemulla, Ronald Schmid (ed), op.cit, p.3
14. AMR Corp., et al. 02 Civ. 7145(AKH Teague v. AMR Corp., et al. 03 Civ. 6800 (AKH). United States District Court, S.D. New York. August 15, 2007.
15. Rules About Carrier Liability in 2-14 C.F.R. § 254.4 (West 2007), para. 200.
16. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004.
17. Katouzian, Naser, *Legal application of Contract, Igha*, Seventh Edition, Enteshar Joint Stock Company, 2000, p. 270.
18. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004.
19. Katouzian, Nasser, *Non-contractual Obligations - compulsory guarantee*, 8th edition, Tehran University Press, 2007, p. 245
20. Ghasemzadeh, Seyyed Morteza, *Obligations and civil liability without a contract*, 8th Edition, Mizan Publishing, 2009, p. 84
21. Safaei, Seyyed Hossein; and Habibollah Rahimi, *Civil liability (out-of-contract obligations)*, 4th edition, Samt Publications, 2012, p. 101.
22. Katouzian, Nasser, *Non-contractual Obligations - compulsory guarantee*, 8th edition, Tehran University Press, 2007, p. 245
23. Ghasemzadeh, Seyyed Morteza, *Obligations and civil liability without a contract*, 8th Edition, Mizan Publishing, 2009, p. 84
24. Safaei, Seyyed Hossein; and Habibollah Rahimi, *Civil liability (out-of-contract obligations)*, 4th edition, Samt Publications, 2012, p. 101