



COMPENSATION AS A GUARANTEE MECHANISM FOR PASSENGER RIGHTS IN THE AIR TRANSPORT CONTRACT

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Abstract:

Air transport has become the fastest means of connecting countries, contributing to the growth of trade and cultural exchange between nations. However, it is essential to acknowledge that this mode of transport is fraught with risks that may lead to bodily or material damages affecting passengers. Such incidents raise the issue of air carrier liability, prompting both international and national legal systems to adopt protective policies ensuring that injured passengers receive adequate compensation for their losses. This approach has been implemented through international conventions and domestic legislation, including those adopted by the Algerian legislator.

Keywords: Air accident, Warsaw Convention, Air carrier liability, Montreal Convention.

INTRODUCTION:

The balance between the interests of both parties in a transport contract is reflected in the international legislator's combination of two natures of the air carrier's liability: the personal nature, which is established in favor of the air carrier, and the objective nature, which is established in favor of passengers.

Consequently, under this particular framework, liability has acquired a composite nature that is unprecedented in the general rules of civil liability. This is due to the significant importance of the principle of liability limitation for the carrier, as it provides protection by reducing the amount of compensation in the event of an aircraft accident. On the other hand, the carrier's liability for passengers' bodily injuries has become unlimited and operates at two levels, establishing a legal framework that deviates from the provisions of the Warsaw Convention and its amendments. In this case, the carrier cannot invoke the maximum compensation limits stipulated by international legislation.

Based on the foregoing, we pose the following question:

- Do the legal provisions governing the compensation system constitute an effective mechanism for protecting passengers in both international and national legislation?

Significance of the Study:

The significance of this research paper lies in clarifying the compensation limits set forth in the Warsaw Convention and its amendments, as well as in the provisions of Algerian aviation law No. 98/06, as amended and supplemented. It also aims to highlight the legislative policy designed to protect passengers in air transport, given its status as a vital sector that serves society.

Study Plan:

To address the formulated research problem, the following study plan has been proposed:

- First Section: Legal regulations for determining compensation in international conventions.
- Second Section: The position of the Algerian legislator on compensation provisions.



Research Methodology:

To answer the research question, we have adopted the analytical method to examine and scrutinize the various legal texts related to the study topic.

I. Legal Regulations for Determining Compensation in International Conventions

The prevailing principle of air safety in aviation has influenced the provisions of international conventions governing compensation, starting with the Warsaw Convention and its subsequent amendments. It is therefore necessary to clarify the limits of the air carrier's liability regarding passenger transport. The maximum compensation amount has undergone continuous development in the Warsaw Convention and its amendments. Based on this, the discussion will address compensation under the Warsaw Convention (First), compensation in the subsequent amendments to the Warsaw Convention (Second), and the newly introduced modifications to the compensation system (Third).

1. Compensation under the 1929 Warsaw Convention

Legal scholars have agreed that the compensation amounts established by the Warsaw Convention, which determine the air carrier's liability towards claimants, have set maximum limits and are not arbitrary amounts¹. This means that if the damage suffered by passengers is less than the maximum limit, the injured party is entitled only to compensation corresponding to the actual harm incurred, preventing unjust enrichment at the carrier's expense. Accordingly, the Warsaw Convention established maximum compensation limits that the air carrier is required to pay.

The provisions distinguish between compensation for bodily injuries sustained by passengers, damages to baggage, and compensation for delays in transportation.

1.1 Compensation in Cases of Death or Injury

Article 22, paragraph 1 of the 1929 Warsaw Convention states:

"In the case of passenger transport, the carrier's liability towards each passenger is limited to the amount of 125,000 francs. However, if the law of the court seized of the case permits compensation in the form of an annuity (pension), the capital value of such annuity shall not exceed the aforementioned limit. Nevertheless, the passenger may, by special agreement with the carrier, establish a higher amount."²

From this provision, it can be inferred that when the air carrier's liability is established, it is obliged to pay compensation to each injured party or their legal heirs, amounting to 125,000 francs. The compensation specified in the Warsaw Convention covers all damages suffered by the passenger, whether related to death, injury, or any other bodily harm³, in accordance with Article 17 of the Warsaw Convention.

A claim for an amount exceeding the set limit is not permissible, regardless of the severity of the damage. Even if the court handling the case allows compensation in the form of periodic annuities, the maximum compensation limit cannot be exceeded to prevent circumvention of the limited liability provisions.

1.2 Compensation for Loss or Damage to Baggage

The 1929 Warsaw Convention differentiates between compensation limits for registered baggage and unregistered baggage when determining the amount of compensation:

- For registered baggage, the maximum compensation limit is set at 250 francs per kilogram, as stipulated in Article 22, paragraph 2 of the Warsaw Convention⁴.

¹ Elias Haddad, *Le Droit Aérien*, University of Damascus Publications - Faculty of Law, Syria, 2003, p. 311.

² www.logistiqueconseil.org, Convention de Varsovie, pp. 5-9.

³ *Ibid.*, pp. 4-9.

⁴ www.logistiqueconseil.org, Convention de Varsovie, op. cit., pp. 5-9.

- For unregistered baggage (hand luggage), which remains in the passenger's possession and under their supervision, the convention establishes a compensation limit of 5,000 francs per passenger.

1.3 Compensation for Damages Due to Delays

The 1929 Warsaw Convention did not establish a maximum limit for compensation regarding damages resulting from delays. Consequently, Article 22 of the convention applies depending on the situation, whether it concerns delays in passenger and baggage transport or delays in the transport of registered baggage⁵.

However, with the passage of time since the signing of the Warsaw Convention in 1929, the compensation amounts stipulated in the convention became inadequate due to the rising cost of living and inflation. Moreover, advancements in air transport significantly reduced aviation risks. These factors led legal scholars to call for a revision of the maximum compensation limits set in the Warsaw Convention to better protect passengers, who often suffered from what was deemed an unfairly low compensation threshold.

2. Compensation in the Subsequent Amendments to the Warsaw Convention

In response to a new legal approach advocating a shift in protective policies—moving away from favoring the carrier and toward prioritizing the rights of air transport consumers—the Warsaw Convention was amended through several protocols and agreements. The most notable amendments include:

2.1 Compensation under the 1955 Hague Protocol

Several attempts were made to increase compensation amounts due to the expansion of air travel and improvements in aviation security and safety. These efforts were further driven by the United States' threat to withdraw from the Warsaw Convention⁶.

As a result, the 1955 Hague Protocol was adopted, which raised the maximum compensation amount for injured passengers or their heirs to 250,000 francs, replacing the previous limit set in Article 22 of the Warsaw Convention⁷. This revision was introduced in Article 11 of the Hague Protocol.

Furthermore, paragraph 4 of Article 11 of the Hague Protocol states that the maximum compensation limit does not prevent the court handling the dispute from awarding additional amounts to cover court costs and other litigation expenses incurred by the claimant. However, these additional sums must not exceed the compensation amount that the carrier is required to pay within six months from the date of the incident.

Despite this partial modification, which doubled the compensation amount for passengers, the United States refused to ratify the Hague Protocol, arguing that the new compensation cap was still insufficient to reflect the value of an American citizen⁸. The U.S. did not ratify the protocol until September 15, 2003.

However, the amendment introduced by the protocol was partial, as it did not affect the maximum compensation limit for baggage. This was due to disagreements during the protocol's negotiations regarding the basis for calculating the maximum compensation for baggage when the damage to registered baggage was partial⁹.

Clause (A) of paragraph 2 of Article 11 of the protocol maintained the maximum compensation limit for registered baggage at 250,000 francs. Meanwhile, Clause (B) of the same paragraph stipulated:

"In the event of loss, damage, or delay affecting part of the registered baggage or any item contained therein, only the total weight of the affected package(s) shall be considered in determining the carrier's liability limit. However, if the loss, damage, or delay of part of the registered baggage or any of its contents affects the

⁵ Mohamed Farid Al-Areini, *Le Droit Aérien - Transport Aérien et Accidents d'Aviation*, New University House, Alexandria, Egypt, 2009, p. 126.

⁶ N.M. Matt, *Traité de Droit Aéronautique*, 3rd edition, Pedone, Paris, 1980, p. 478.

⁷ www.logistiqueconseil.org, Protocole de La Haye, pp. 3-7.

⁸ R. Rondière, *Droit des Transports Terrestres et Aériens*, Précis Dalloz, Paris, 1977, p. 124

⁹ Mohamed Farid Al-Areini, *op. cit.*, p. 126.

value of other packages covered by the same baggage claim form, the total weight of all such packages shall be considered in determining the liability limit."¹⁰

From analyzing this provision, it is evident that the 1955 Hague Protocol established that only the total weight of the damaged package(s)—provided they are covered by the same baggage claim form—would be used as the basis for calculating the maximum compensation. However, if multiple claim forms were issued, only the weight of the damaged package would be considered when determining the compensation limit. In cases where partial damage leads to a reduction in the value of other packages, the total weight of all affected packages (both directly damaged and those with diminished value) would be taken into account when calculating the maximum compensation.

2.2 The 1966 Montreal Agreement

The International Air Transport Association (IATA)¹¹ successfully organized an international conference in February 1966 in Montreal, Canada, attended by 59 countries. This conference resulted in the Montreal Interim Agreement, which:

- Established the objective liability of the air carrier.
- Allowed the carrier to benefit from limited liability.
- Revised the compensation amount, setting it at \$75,000 to cover damages suffered by passengers.
- However, if litigation costs and legal fees were incurred in the country where the lawsuit was filed, the compensation amount was reduced to \$58,000¹².

The agreement outlined specific conditions for injured passengers to receive compensation:

- A. The transport must be international and subject to the Warsaw Convention.
- B. The passenger's injury must have occurred onboard the aircraft, during landing, or disembarkation within U.S. territory, and the majority of passengers must be of American nationality.
- C. The carrier must be a party to the agreement, either by signing or adhering to it.

These conditions were heavily criticized by the international community, as they were perceived to favor American passengers at the expense of passengers from other nationalities¹³.

As a result, legal scholars and organizations supporting air accident victims called for a new protocol that would fairly increase compensation limits for all passengers, regardless of nationality, ensuring equal treatment without bias¹⁴.

2.3 The 1971 Guatemala Conference

A meeting was held in Guatemala City on March 8, 1971, introducing amendments concerning the basis of liability and the maximum compensation amounts that the air carrier must pay. The protocol distinguished between two cases, as outlined in Article 8(1), which amended Article 22 of the Warsaw Convention, as follows¹⁵:

- In the event of passenger injury or death, the protocol set a compensation amount of 1,500,000 francs.

¹⁰ www.logistiqueconseil.org, Protocole de La Haye, pp. 3-7.

¹¹ www.IATA.org

¹² Atef El-Sayed Al-Faqi, *The Evolution of Air Carrier Liability Under the 1999 Montreal Convention*, Dar Al-Fikr Al-Jamii, 1st edition, Alexandria, Egypt, 2009, p. 563.

¹³ R. Rondi re, *op. cit.*, p. 135.

¹⁴ Amani Ahmed Abdullah Moussa, *The Evolution of Air Carrier Liability Exoneration Between the 1929 Warsaw Convention and the 1999 Montreal Convention*, *Journal of Justice*, Issue 42, 16th Year, 2024, p. 225.

¹⁵ www.legislation.gov.uk/ukxi/2002/263 Guatemala Protocol 1971.



- In the event of delayed passenger transport, the carrier was obligated to compensate each passenger with an amount exceeding 62,500 francs.

- For registered and unregistered baggage, in cases of damage, loss, or delayed transport, the protocol set the compensation amount at 15,000 francs.

However, this protocol did not achieve significant success due to the United States' refusal to ratify it.

As a result, in 1975, the International Civil Aviation Organization (ICAO) proposed Montreal Protocol No. 3, which introduced a new system for calculating compensation based on Special Drawing Rights (SDRs)¹⁶.

3. The Newly Introduced Compensation System

The ICAO¹⁷ took a bold step by challenging the provisions of the Warsaw Convention and attempting to move away from them by proposing a new convention aimed at revising the limits of carrier liability and compensation amounts.

This proposal was presented during the International Diplomatic Conference on Air Law, held between May 10 and May 28, 1999, leading to the adoption of the Montreal Convention for the Unification of Certain Rules for International Air Transport (1999)¹⁸.

3.1 Provisions of the Newly Introduced Compensation System under the 1999 Convention

Paragraph 2 of Article 1 of the Montreal Convention states:

"This Convention applies to all international transportation of persons, baggage, or cargo performed by aircraft for remuneration. It also applies to gratuitous transportation performed by any air transport enterprise."

From this provision, it is evident that the Montreal Convention established the general framework for its application, closely resembling the original Warsaw Convention but with a slight expansion to include gratuitous transportation.

One of the most significant innovations introduced by the convention concerns compensation, as its drafters made substantial efforts to increase the maximum compensation amount for death or injury.

However, the compensation amount stipulated in the Montreal Convention does not cover all damages suffered by passengers. Instead, some damages are subject to the principle of compensation according to actual harm when claims exceed the maximum compensation limit set by the convention. This demonstrates that compensation limits remain fluctuating between restriction and flexibility.

Ideally, compensation should cover all damages suffered by the victim, and the injured party should automatically receive compensation for their damages without conditions. The Montreal Convention reaffirmed this under the principle of compensation according to actual harm, which benefits the injured party.

Moreover, the Montreal Convention (1999) did not overlook the interests of air carriers. In its pursuit of a balance between the interests of both parties, the convention introduced a dual-level liability system¹⁹.

¹⁶ It is an accounting unit valued based on a selection of 16 national currencies, determining carrier liability based on objective responsibility, with the maximum limit raised to 100,000 Special Drawing Rights (equivalent to USD 117,000 per passenger in case of death or bodily injury). The protocol also allows member states to implement a supplementary compensation system within their jurisdiction

¹⁷ www.icao.org-doc

¹⁸ www.logistiqueconseil.org, Convention de Montréal 1999, p. 3.

¹⁹ www.logistiqueconseil.org, Convention de Montréal 1999, pp. 7-8.



3.2 Maximum Compensation Limits under the 1999 Montreal Convention

Under the 1999 Montreal Convention, the liability of the air carrier has become objective, based on the occurrence of damage. As for compensation limits, they are outlined in Articles 21 and 22 of the convention as follows:

A. Maximum Compensation for Injury or Death

Regarding passengers, the air carrier's liability is no longer subject to any maximum limit, which represents one of the significant innovations of the convention. However, a distinction must be made between two levels of liability:

- **First Level:** If the damage amount is less than 100,000 Special Drawing Rights (SDRs) per passenger, the carrier's liability is absolute and objective, meaning that the carrier cannot escape liability unless it proves that the injured party was at fault.

- **Second Level:** If the damage amount exceeds 100,000 SDRs, the carrier's liability becomes rebuttable. The carrier can avoid liability by proving that the damage was caused by a third party's fault and that the damage did not result from negligence on the part of the carrier or its employees²⁰.

It appears that the international legislator, by introducing these two levels, sought to encourage injured passengers or their heirs to accept the first level of liability, where the carrier's responsibility is absolute, but the compensation does not exceed 100,000 SDRs. This suggests that this amount serves as a *de facto* maximum compensation limit²¹.

B. Maximum Compensation for Baggage Damage

Regarding compensation for baggage-related damages, the 1999 Montreal Convention did not increase the maximum compensation limits, including those related to delays. Instead, it retained the same limits established by the 1975 Montreal Protocol.

- The maximum compensation for baggage damages is set at 1,000 SDRs per passenger, whether for registered or unregistered baggage.

- The measurement unit for compensation remains SDRs²².

From the above, it is clear that the primary objective of the 1999 Montreal Convention was to prevent air carriers from evading liability for passenger and baggage damages. This was achieved by eliminating the concept of limited objective liability and simplifying compensation procedures, increasing the compensation amount by nine times compared to the 1929 Warsaw Convention.

Additionally, the Montreal Convention aimed to balance the interests of air transport consumers and air carriers by eliminating the previous advantage given to carriers at the expense of injured passengers, which had been the prevailing practice under the Warsaw Convention.

II. The Algerian Legislator's Position on Compensation Provisions

The general principle of compensation is that it should cover all damages. However, the Warsaw Convention, along with its subsequent amendments, as well as the Algerian legislator in Civil Aviation Law No. 98/06, deviated from this principle by setting a maximum compensation limit that the air carrier must pay to an injured passenger due to an accident.

²⁰ R. Rondière, *op. cit.*, p. 137.

²¹ www.logistiqueconseil.org, Convention de Montréal 1999, p. 7

²² www.logistiqueconseil.org, Convention de Montréal 1999, p. 7.

The Algerian legislator recognized the compensation rules in its civil aviation law following the 1929 Warsaw Convention, as amended by the 1955 Hague Protocol, which Algeria ratified under Decree No. 64/74 dated March 2, 1964²³.

However, Algeria did not ratify the subsequent amendments to the Warsaw Convention. As a result, the provisions of the Warsaw Convention and the Hague Protocol remain in force in Algeria and have become an integral part of its legal system. This has had a significant impact on the rules governing domestic air transport, particularly regarding the maximum compensation limits for passengers and baggage.

Based on this, the discussion will cover:

- Compensation in the event of death or injury (First)
- Compensation for damages due to delays (Second)
- Compensation for baggage loss or damage (Third).

1. Compensation in the Event of Death or Injury

Article 150 of Civil Aviation Law No. 98/06 states:

"Subject to the provisions of Article 152 below, the liability of the air carrier towards each transported person shall be exercised in accordance with the rules of the Warsaw Convention dated October 12, 1929, and the Hague Protocol dated September 28, 1955, both ratified by Algeria, with the maximum compensation set at 250,000 accounting units per passenger."

From this provision, it is evident that the Algerian legislator explicitly adopted the compensation limits set by the 1929 Warsaw Convention and its 1955 Hague Protocol amendment. The maximum compensation for passenger transport is 250,000 accounting units per passenger. This means that if multiple passengers suffer harm during the same flight, the carrier must compensate each affected passenger up to the limit of 250,000 accounting units²⁴.

The maximum compensation limit for passenger transport includes all types of damages specified in Article 145 of Law No. 98/06, which defines the liability of air carriers regarding passengers. These damages cover:

- Death of the passenger
- Bodily injuries
- Any physical, organic, or functional impairment
- Mental health damage²⁵

Upon reviewing Algerian law, it becomes evident that there is no domestic legislation defining the monetary equivalent in national currency for the golden French franc mentioned in the Warsaw Convention, even though Algeria has ratified the convention. Moreover, the Bank of Algeria has never established a conversion rate between the national currency and the golden franc, nor has it set the value of the Algerian dinar in terms of gold.

²³ Warsaw Convention 1929 as amended by the Hague Protocol, ratified by Algeria under Presidential Decree No. 64/74 dated 02/03/1964, Official Gazette, Issue 26, 1964.

²⁴ Article 150 of Law No. 98/06 establishing the general rules on Algerian civil aviation, Official Gazette, Issue 48, published on June 7, 1998, as amended by Law No. 15/14 dated June 15, 2015, Official Gazette No. 41, published on July 29, 2015, and further amended by Law No. 19/04 dated July 17, 2019, Official Gazette No. 46, published on July 21, 2019

²⁵ It can be argued that an air carrier liable for psychological and mental damages caused by acts of air piracy benefits from the legally prescribed maximum limit of 250,000 accounting units per passenger suffering psychological harm from such acts.

As a result, it is not possible to use the official gold price when converting accounting units into the national currency, as there is no official exchange link between them.

However, the legislator did acknowledge the possibility of converting compensation amounts in Article 150(3) of Law No. 98/06, corresponding to Article 22(5) of the Warsaw Convention, which states:

"The mentioned accounting units may be converted on the day of judgment."²⁶

Nevertheless, the legislator did not specify the method for conversion. This leaves the national judge facing a legal dilemma when applying compensation provisions related to air carrier liability—specifically, how to convert the accounting unit (French franc) into the national currency.

Which gold price should be used for this conversion? Applying the official gold price is not possible, as it no longer exists today, except in transactions between central banks.

Referring to Algerian monetary and banking legislation, the legislator established that the Algerian monetary system is based on the legal value of the dinar, which is determined by law while respecting international agreements. Consequently, banknotes, coins, and digital currency issued solely by the central bank have legal value and unlimited legal tender power²⁷.

2. Compensation for Damages Due to Delays

The Algerian legislator directly addressed the air carrier's liability for delays in Article 147 of Law No. 98/06, as amended, which states:

"The air carrier is liable for losses resulting from delays in air transport of passengers, baggage, and cargo, in accordance with the provisions stipulated in the applicable legislation."

It is evident that this article is a verbatim reproduction of Article 19 of the Warsaw Convention as amended by the 1955 Hague Protocol.

There is no doubt that the carrier's obligation to perform transport on the scheduled time indicated in the ticket is a contractual obligation stemming from the transport contract. According to Algerian law, the carrier's obligation to complete air transport is considered an obligation to achieve a specific result. Consequently, as soon as the result is not achieved—i.e., the passenger is not transported to the agreed destination on time—the carrier's liability is automatically established, unless the carrier proves that the delay was due to an external cause beyond its control.

However, the obligation to achieve a result applies only when a specific time for transportation has been pre-agreed. If no such agreement exists, the carrier's obligation shifts from achieving a result to exercising due diligence, meaning the carrier must ensure that transport is completed within a reasonable timeframe. In such cases, the injured passenger must prove that the failure to complete transport within a reasonable timeframe was due to the carrier's fault.

Referring back to Article 147 of Law No. 98/06, it is noticeable that the legislator did not define "delay" nor specify the timeframe within which a delay occurs. Additionally, the article lacks clarification regarding the term "losses", leaving it up to trial judges to determine its scope when ruling on air transport delay disputes.

However, this liability can be rebutted if the air carrier proves that it, along with its representatives, took all necessary measures to avoid the losses or that it was impossible to take such measures.

Recent Legal Reforms Addressing Air Travel Delays in Algeria

²⁶ Article 150/3 of Law No. 98/06 on Civil Aviation, as amended, *op. cit.*

²⁷ Article 4 of Law No. 23/09 on Monetary and Banking Law, dated June 21, 2023, Official Gazette, Issue 43, published on June 27, 2023.

Due to the increasing number of delays affecting flights at Algerian airports, the legislator incorporated "delay cases" into Law No. 15/14, which amended Law No. 98/06 on civil aviation. This was specifically addressed in Article 173 bis 1/1 and 1/2²⁸, which establishes that:

"In the event of flight cancellation, delay, or denied boarding due to carrier-related reasons, the passenger is entitled to full care, including being informed of the situation, receiving assistance, and obtaining compensation proportional to the incurred damage."

Here, the legislator explicitly mandates compensation for passengers suffering harm due to flight delays or cancellations.

Furthermore, Executive Decree No. 06/175, which defines the conditions and procedures for implementing air passenger rights, grants affected passengers a fixed compensation:

- 3,000 Algerian dinars (DZD) for domestic flights
- 4,500 Algerian dinars (DZD) for international flights²⁹

However, this compensation is only granted if the passengers do not receive any other form of compensation. Additionally, affected passengers may be provided with hotel accommodations in the event of a significant delay or flight cancellation³⁰.

Third: Compensation for Lost or Damaged Baggage

Article 146, paragraph 1, of Law No. 98/06 on Civil Aviation Regulations states:

"The air carrier is liable for losses and damages resulting from the loss, damage, or destruction of registered baggage, provided that the primary cause of the loss occurred while the registered baggage was under the carrier's custody, whether at the airport, onboard the aircraft, or in any other location... and that the damage resulted from an event that occurred during air transport."³¹

From this provision, it is clear that the Algerian legislator establishes the air carrier's liability for damages to registered baggage, but only if the damage occurs within a specific time and location framework. Consequently, the carrier's liability for failing to safeguard registered baggage is only established if the following conditions are met:

1. The Event Leading to the Damage

The carrier's or its employees' fault may lead to damage, loss, or destruction of registered baggage, which is explicitly stated in Article 146(1) of Law No. 98/06. This provision clearly establishes the carrier's liability for damages to registered baggage, but the legislator does not define the term "event."

However, the term "accident" is broader and more encompassing since the carrier has complete control over registered baggage³², which it does not have over passengers. Therefore, an "event" should be understood as any possible cause of damage, whether related to transport operations or external factors³³.

Unlike passenger transport liability, baggage transport liability is personal rather than objective, as the carrier can avoid liability by proving the absence of fault. This principle is reinforced by Article 148(1) of Law No. 98/06, which states:

²⁸ Article 173 bis 1/1-2 of Law No. 15/14 on Civil Aviation, *op. cit.*

²⁹ Article 9 of Executive Decree No. 16/175 dated June 14, 2016, Official Gazette, Issue 36, published on June 19, 2016.

³⁰ Article 10 of Executive Decree No. 16/175, *op. cit.*

³¹ Article 146 of Law No. 98/06, as amended, *op. cit.*

³² Saïd Al-Jaddar, *Le Contrat de Transport de Marchandises en Droit Commercial Moderne*, University Press, Alexandria, Egypt, 2000, p. 92.

³³ Mohamed Farid Al-Areini, *op. cit.*, p. 223.

"The air carrier is not liable if it proves that it, along with its representatives, took the necessary measures to prevent the loss or that it was impossible to take such measures."³⁴

2. The Timeframe for Damage to Registered Baggage

According to Article 146, the air carrier's obligation to ensure the safety of registered baggage begins once the passenger surrenders it and it enters the carrier's custody. If the baggage suffers any damage during this period, the carrier is presumed at fault unless it proves that it and its employees took the necessary precautions to prevent the damage and that the loss resulted from an external cause beyond its control.

Based on this, any damage occurring outside the air transport period is excluded from the carrier's liability³⁵. This includes damages that:

- Occur before the baggage enters the departure airport
- Occur after the baggage exits the arrival airport
- Result from an emergency landing outside an airport

In such cases, the cause of the damage falls within a ground transport period rather than an air transport period. This principle is confirmed in Article 146, paragraph 2, which states that the air transport period does not cover any land or sea transport conducted outside the airport³⁶.

3. Forms of Damage Affecting Registered Baggage

For an event to be considered an actionable incident under air transport liability, it is not sufficient for it to occur during the air transport period; it must also result in damage to registered baggage. The Algerian legislator has categorized three types of damage to registered baggage, as specified in Article 146 of Law No. 98/06:

A. Destruction of Registered Baggage

Destruction does not only refer to the complete disappearance of the baggage but also includes any alteration or modification that renders it unfit for its intended use. This destruction can be partial or total, a concept referred to in legal doctrine as "freight incapacity"³⁷. For example, destruction occurs when registered baggage arrives with missing items in quantity or weight.

B. Damage to Registered Baggage

Damage refers to any impairment that reduces the value of the baggage in relation to its intended use. In other words, it encompasses any physical deterioration that occurs during transport, such as the tearing or breakage of solid objects inside the baggage³⁸.

C. Loss of Registered Baggage

Loss occurs when baggage completely disappears and the carrier is unable to return it to its rightful owner. This includes cases where baggage is stolen or wrongfully delivered to another person, making it impossible to retrieve.

This legal classification of baggage damage is exhaustive, as explicitly stated in Article 146 of Law No. 98/06, as amended.

³⁴ Article 148/1 of Law No. 98/06, as amended, *op. cit.*

³⁵ M. Pourcelet, *Transport Aérien, International et Responsabilité*, Presses de l'Université de Montréal, 1964, p. 44.

³⁶ Article 146/2 of Law No. 98/06, as amended, *op. cit.*

³⁷ Mohamed Farid Al-Areini, *op. cit.*, p. 226.

³⁸ Mohamed Farid Al-Areini, *op. cit.*, p. 227.



D. Unregistered Baggage

Unregistered baggage refers to items that passengers keep in their possession onboard the aircraft, such as hand luggage.

Since Algeria ratified the 1929 Warsaw Convention, it is obligated to apply all its provisions, including those concerning unregistered baggage. Additionally, because most provisions of Algerian Civil Aviation Law No. 98/06, as amended, are derived from the 1929 Warsaw Convention (as amended by the 1955 Hague Protocol), the same legal principles governing registered baggage apply to unregistered baggage under Algerian law³⁹.

CONCLUSION:

In conclusion, this research paper highlights the key findings and recommendations as follows:

FINDINGS:

1. The 1929 Warsaw Convention is the cornerstone of international aviation law treaties that regulate the liability of air carriers at the international level.
2. The 1999 Montreal Convention, which amended the Warsaw Convention, introduced a dual-level liability system:
 - Objective liability, based on risk.
 - Personal liability, based on presumed fault.
3. Law No. 15/14, which amended Law No. 98/06 on Algerian civil aviation regulations, represents a major advancement by introducing provisions that establish passenger rights and compensation entitlements in cases of accidents or flight delays.
4. The ambiguity in compensation calculation methods and its capping limits remains an obstacle to fully ensuring the rights of injured passengers, despite the recognition of air carrier liability at both international and national levels.

RECOMMENDATIONS:

1. The Algerian legislator must ratify the 1999 Montreal Convention to ensure the adoption of the dual-level liability system and increase the compensation limits beyond those stipulated in the 1929 Warsaw Convention.
2. The Algerian legislator should revise the conversion mechanisms for compensation amounts, as they are currently calculated in the non-tradable French gold franc, which is only used by central banks and not accessible for individual transactions.
3. Raising passenger awareness through increased guidance, publications, and awareness campaigns in the field of air transport, ensuring that travelers are well-informed about their rights and entitlements.

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³⁹ Unregistered baggage compensation: 5,000 francs per passenger.



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