

EJCBLT

ISSN : 3031-7355

<https://doi.org/10.61796/ejcbt.v1i8.967>

THE JUDICIAL MECHANISM IN RESOLVING AIR CONSUMER DISPUTES: A CRITICAL ANALYSIS OF CHALLENGES AND SOLUTIONS IN THE IRAQI SYSTEM

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Abstract: This study addresses the judicial mechanisms available for resolving consumer disputes in the field of air transport in Iraq, through a critical analysis of the challenges hindering the protection of passenger rights when disputes arise with airlines. Given the rapid developments in the global air transport sector, the judiciary becomes a vital tool for ensuring justice and protecting consumer rights. However, the Iraqi judicial system faces several challenges that hinder the swift and fair achievement of justice in this field. The main challenges consumers face in air transport include high litigation costs, the complexity of legal procedures, long waiting periods in courts, and the difficulty of proving fault against airlines, especially due to the lack of complex technical evidence. Furthermore, the lack of legal awareness among passengers about their rights makes it more difficult for them to claim compensation or defend their rights in court. These problems have been exacerbated by Iraq's failure to adopt the 1999 Montreal Convention, which strengthens consumer protection in the field of international air transport. The study aims to assess these mechanisms and offer solutions to improve the efficiency of the Iraqi judicial system in line with international standards. The study is based on a review of the relevant legal provisions.

Keywords: Consumer disputes, Air transport, Iraqi judiciary, Judicial mechanism, Consumer protection

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Introduction

Considering the significant developments occurring in the global air transport sector, the importance of the judiciary emerges as a fundamental tool for ensuring the protection of air passenger rights. The judiciary aims to establish justice, protect rights, and safeguard lives and property, thereby enhancing trust in the judicial institution. In this context, the judicial mechanisms available to air passengers serve as an effective means for resolving disputes that may arise from air transport contracts, whether related to delays, damages, or fatalities resulting from accidents.

However, numerous challenges confront the judiciary in this area, including the costs of litigation, lengthy legal procedures, and the difficulty of proving fault by the air passenger. These challenges make it essential to consider the necessary reforms to develop the Iraqi judicial system and ensure compliance with relevant international agreements, such as the Warsaw and Montreal Conventions.

This research aims to analyze the current judicial mechanisms in Iraq concerning the protection of air passenger rights and to provide recommendations for improving these mechanisms, ensuring the effectiveness of the judicial system in this field, and guaranteeing fair and prompt protection of air travelers' rights.

Problem Statement

Air travelers in Iraq face a range of challenges when seeking judicial resolution for disputes with airlines. Among the most significant challenges are the high costs of litigation, lengthy waiting periods in legal procedures, and the difficulty of proving fault against the companies. Furthermore, many travelers suffer from a lack of awareness regarding their legal rights, which hinders their ability to claim compensation. These issues obstruct the effective and swift realization of justice, highlighting the need for judicial and legislative reforms to ensure the protection of travelers' rights and to enhance confidence in the judicial system.

Methods

This research employs a mixed-methods approach to analyze the judicial mechanisms in Iraq regarding the protection of air passenger rights. Initially, a systematic literature review will establish a theoretical framework, identifying gaps in existing research on air passenger rights and relevant international agreements, such as the Warsaw and Montreal Conventions. Subsequently, semi-structured interviews with key stakeholders—including legal professionals, judges, airline representatives, and consumer rights advocates—will gather qualitative insights into the challenges faced in the judicial process. A survey targeting air travelers will quantitatively assess their experiences and awareness regarding their rights, highlighting obstacles encountered when seeking redress for disputes with airlines. Additionally, a comparative analysis of judicial mechanisms in jurisdictions with established frameworks for air passenger rights will identify best practices applicable to Iraq. Finally, based on the findings, the study will formulate actionable recommendations aimed at enhancing the effectiveness of the Iraqi judicial system, focusing on legislative reforms, public awareness initiatives, and improvements in judicial procedures. This comprehensive methodology will provide a nuanced understanding of the challenges and potential solutions for improving the resolution of air consumer disputes in Iraq.

Results and Discussion

The Concept of Judicial Action and the Role of the Judiciary in Protecting Air Consumers

Judicial action is the legal means by which consumers resort to resolving disputes with air carriers in the event of conflicts arising from air transport contracts. Through this action, consumers can claim their rights or seek compensation for damages that may occur due to accidents, delays, or loss of luggage .

The judiciary plays a crucial role in safeguarding the rights of air consumers by providing a platform for them to assert their claims and seek justice. It ensures that legal standards are upheld and that consumers receive fair treatment in their dealings with airlines. This mechanism is essential for maintaining trust in the air transport sector and for fostering accountability among carriers .

By understanding the concept of judicial action and its implications, consumers can better navigate the legal landscape and assert their rights effectively.

The Concept of Judicial Action in Iraqi Law

The Iraqi law defines judicial action in Article 2 of the Iraqi Civil Procedure Law No. 83 of 1969 as "a request made by a person to claim their right from another before the judiciary." It is also described as a request submitted by the party concerned, or their legal representative, to the judiciary, seeking a right they claim to have against the other party, whether one of the parties is a natural person or a legal entity.

This definition highlights the formal process through which individuals can seek legal redress and asserts the fundamental principle that the judiciary serves as a means for individuals to uphold

their rights. In the context of air transport, this concept is essential for passengers to understand how they can initiate legal proceedings against airlines in the event of disputes.

Therefore, the conditions for a lawsuit are as follows:

1. Both parties to the lawsuit must possess the necessary capacity to exercise rights and engage in litigation.
2. The defendant must be a party against whom a judgment can be issued, based on an acknowledgment or admission, and must be subject to a ruling or obligation that indicates the validity of the claim.
3. The subject of the claim must involve a clearly defined, actual, and achievable interest, while a potential interest is sufficient if there is cause for concern about possible harm to the parties involved
4. The right being claimed must be one that has been denied, even if there has not been an obstacle to its exercise and must aim to prevent a dispute in the future or one that could possibly arise.

Parties to the Lawsuit in Air Disputes

All lawsuits brought before the judiciary generally consist of two parties: the plaintiff and the defendant, or their legal representatives. In the case of liability claims arising from air transport contracts, the parties involved are the consumer (the passenger) and the air carrier or their representative .

This clear identification of the parties is crucial for determining responsibility and ensuring that the rights of both consumers and carriers are properly addressed in legal proceedings. Understanding the roles of each party helps to facilitate the resolution of disputes effectively and ensures that claims are adjudicated fairly.

First: The Plaintiff

The legal principle is that the plaintiff in a liability claim against the air carrier is the injured party. In claims arising from air transport contracts for individuals or their luggage, the passenger is considered the injured party. However, complications arise in determining who the plaintiff is in the event of a passenger's death. To address this issue, it is essential to understand the stance of international agreements governing air transport and the relevant national legislations.

International agreements have remained silent on this matter, leaving the determination of who can file a lawsuit in the event of a passenger's death to national laws. This approach avoids potential conflicts with the sensitivities of social concepts within family laws of the regulating state. This is the position taken by the Warsaw Convention of 1929, and similarly, the Montreal Convention did not address this issue and left it to national legislation.

As for the position of Iraqi law on this issue, the Iraqi Transport Law No. 80 of 1983, as amended, specifies in Article 24 a general rule regarding who has the right to file a liability claim in the event of a passenger's death. It states:

"Liability claims arising from a transport contract may be filed in the case of a passenger's death, whether the death occurred directly as a result of the accident or after a period of time, by:

1. Those who have been deprived of support due to the passenger's death, for material damages, even if they are not heirs.
2. The spouse and relatives up to the second degree who have suffered genuine and profound emotional pain due to the moral damage".

From this article, the individuals entitled to file a liability claim against the air carrier in the event of a passenger's death are those who were financially dependent on the deceased. They have

the right to seek compensation for material damages resulting from the loss of support. Regarding compensation for moral damages, the article allows claims to be made by the spouse and second-degree relatives who have experienced genuine emotional distress.

Second: The Defendant

Undoubtedly, the defendant in liability claims arising from air transport contracts is the air carrier. Generally, the lawsuit is filed against the carrier itself, and in such cases, there are no complications. However, there are specific scenarios that need clarification, such as the case of the death of the carrier if it is a natural person, as well as the cases involving successive carriers and the distinction between a contracting carrier and an actual carrier. These will be discussed as follows:

1. **Death of the Carrier:** The Montreal Convention of 1999 states in Article 32: "In the event of the death of the person who is liable, a claim for compensation may be brought, in accordance with the provisions of this Convention, against the lawful successors in their estate." This provision implies that the primary action is against the carrier itself; however, in the event of the air carrier's death, the lawsuit can be brought against their successors.
2. **Successive Carriers:** A successive carrier is defined as transportation carried out by different airlines under one or several contracts, with multiple carriers operating their aircraft in succession.

In this case, the incident may occur during one of the stages of this transportation handled by a specific carrier. The question arises: against whom should the liability claim be filed in successive transport?

The Warsaw Convention of 1929 established specific rules regarding the liability of successive carriers, distinguishing between the transport of passengers and the transport of goods and luggage. What is pertinent here is identifying the liable party in the successive transport of passengers. Article 30, paragraph 2 of the Convention states: "A passenger or their successors may only pursue the carrier responsible for the accident or delay in the stage of air transport they operated, unless the first carrier has, by express agreement, assumed liability for the entire stage".

From this text, the claim can only be brought against the air carrier involved in the incident or delay during the stage they operated. However, there is an exception: the claim may be filed against the first carrier even if the incident and damages did not occur during their segment, provided there is an explicit agreement assuming responsibility for the entire journey.

Determining liability here involves identifying the air carrier against whom the incident occurred, leading to the damages suffered by the injured passenger during the flight they operated. This serves the interest of the injured party by facilitating the proof of liability, as there is no discrepancy in time and place regarding the incident in question. This clarity simplifies the process of establishing responsibility and allows for a more straightforward pursuit of claims for compensation.

Similarly, the Montreal Convention of 1999 includes a comparable provision in Article 36, paragraph 2, which states: "A passenger or any person deriving a right from them may only bring a liability claim against the air carrier responsible for the accident or delay that caused the damage in the stage of transport they operated. Nevertheless, a claim may be filed against the first carrier even if the damage occurred during a subsequent carrier's stage, if there is an express agreement assuming liability for the entire stage."

It can be inferred from the text that if multiple successive carriers are involved in transportation, each carrier is a party to the transport contract for the stage they execute. Nevertheless, the carrier that entered the successive transport contract is liable for the entire stage agreed upon in

the contract, even if they did not personally or partially execute it.

Additionally, it is noteworthy that the article states that any clause contradicting this is deemed invalid. In contrast, the Montreal Convention of 1999 allows for holding the carrier responsible who executed the first stage of the journey for all incidents that occur during the journey if there is an explicit agreement to that effect

3. Contracting Carrier and Actual Carrier: This term refers to the carrier with whom the passenger has contracted for transportation, known as the "contracting carrier." However, it often occurs in practice that another carrier, different from the contracting carrier, performs the transportation; this carrier is referred to as the "actual carrier".

The Montreal Convention of 1999 places significant emphasis on both the contracting carrier and the actual carrier, allowing for liability claims to be filed against both simultaneously. The Convention considers each of them a carrier subject to its provisions, establishing joint liability between the contracting carrier and the actual carrier, along with their affiliates and agents.

The Competent Court in Air Disputes

Determining the competent court to hear a liability claim against the air carrier has a significant impact on various issues governing this claim. The litigation procedures will be subject to the laws of that court. Additionally, the law of this court determines the impact of the injured party's fault on the carrier's liability, whether it results in exemption from liability or a reduction of that liability. and the rules for calculating the statute of limitations. In addition to the issues governed by the convention, such as defining the nature of compensable damages, identifying who has the right to seek compensation, and clarifying the causal relationship. Therefore, there are certain civil jurisdiction rules outlined in international agreements, while others are found in Iraqi legislation. The researcher has focused on mentioning the Warsaw Convention and its amended protocols, as the Republic of Iraq has ratified them, and their provisions apply to the air transport sector in Iraq. However, the Republic of Iraq has not yet ratified the Montreal Convention. It will be discussed as follows:

The Competent Court According to the Warsaw Convention and Its Amendments

The Warsaw Convention of 1929 established provisions regarding the competent court for liability claims. Article 28 states: "The plaintiff must bring the liability claim at their discretion in the territory of one of the contracting States, either before the court of the carrier's domicile, the principal place of business, or the place where the contract was made, or before the court of the place of arrival". It is evident from the above that the Warsaw Convention of 1929, with the aim of facilitating access for the injured parties and alleviating their burdens, grants them the option to file liability claims before multiple courts, provided that these courts are in the territory of a State party to the Convention. This is intended to ensure the application of the provisions of the Convention. These courts include the court of the carrier's domicile, the court of the principal place of business, or the court of the plaintiff's location where the carrier has an establishment. It also includes the court where the transportation contract was concluded or the court of the place of arrival. While Article 28 of the Warsaw Convention broadens the right to choose any of the four mentioned courts, this specification is binding for the parties to the contract, and they cannot agree otherwise.

The Guatemala City Protocol of 1971 added a fifth court to the four courts specified in Article 28 of the Warsaw Convention. Article 12 of this protocol introduced a paragraph to the text of Article 28, stating: "In the event of damage resulting from the death of a passenger or injuries sustained by them, or from delay, loss, or damage to their luggage, the claim may be brought before the court that has jurisdiction over the area where an establishment owned by the carrier is located, provided the

passenger has a domicile or is permanently residing in the territory of the contracting State where that establishment is situated." This court is deemed competent even if the establishment has no direct connection to the transportation process.

However, the Warsaw Convention overlooked specifying the jurisdiction of the court at the location of the damage, which was an important aspect that should not have been omitted.

It is important to note that Article 28 of the Warsaw Convention only governs claims related to the air carrier's liability for damages incurred by passengers or their luggage, or damages arising from delays in transportation. Consequently, this article does not apply to claims filed by the carrier against the shipper for inaccuracies in the information provided, which the carrier recorded in the air waybill, or to claims filed by the passenger against the carrier seeking to void the air transport contract.

The Competent Court in Iraqi Law

According to the Iraqi Civil Aviation Law No. 148 of 1974, Article 183 states: "Claims for damages caused by aircraft on the surface of the earth shall be filed either at the court where the incident occurred, at the domicile of the defendant, or at the principal place of business, according to the plaintiff's choice. The injured party may also file the claim directly against the insurer or guarantor before the court of their domicile or the principal place of business."

Judge Ammar Ahmed Mustafa of the First Instance Court indicated that "a passenger who is harmed due to a delay in the flight schedule or a change in its route can file a lawsuit against the airline." He pointed out that "the appropriate venue for the injured party is the First Instance Court, as it has jurisdiction."

This means that the First Instance Court is competent to hear air transport claims. However, the complexity of commercial activities has increased pressure on the First Instance Court, leading to the establishment of a specialized commercial judiciary independent of civil courts. This specialized judiciary addresses disputes with a foreign element, resolving urgent commercial disputes such as foreign investments, maritime and air transport, and other modern commercial activities that require prompt resolution.

Therefore, a specialized First Instance Court was established to handle commercial disputes in which one of the parties is a foreign entity, as per the statement issued by the Supreme Judicial Council dated November 1, 2010. The jurisdiction of this court is (in terms of type) limited to commercial disputes, and (personally) it applies when one of the parties in the lawsuit is a foreign entity. Thus, jurisdiction is established for this court in such cases. However, the question that arises is: when does a lawsuit qualify as commercial?

It is known that the First Instance Court specializing in commercial disputes has jurisdiction over cases where one of the parties is a foreign entity. However, when this court was established, it did not specify the nature of the commercial cases it would handle. Therefore, it falls on the judges of this court to determine and classify these cases as commercial or not, relying on the criteria that distinguish commercial activities from civil ones as outlined in commercial law. Given that air transport inherently involves a commercial element, it falls under the category of commercial activities in Iraq.

From the previous discussion, it can be observed that the statement issued by the Supreme Judicial Council regarding the establishment of the specialized First Instance Court for commercial lawsuits indicates that Article (5) of the Commercial Law No. (30) of 1984 is exhaustive rather than illustrative. This places the judge in a challenging position when it comes to classifying some newly emerging commercial activities.

It is also observed in this context regarding the court's jurisdiction concerning the parties

subject to it that the statement stipulates that one of the parties in the lawsuit must be a foreign person, meaning non-Iraqi. This condition excludes Iraqi consumers who contract with an Iraqi air carrier from seeking remedies in the specialized commercial court, as the requirement for foreign element is not met, thus forcing them to return to the First Instance Court handling civil lawsuits. This contradiction undermines the confidence of air consumers in accessing justice.

However, judicial practice in Iraq has established that disputes arising from air transport contracts fall under the jurisdiction of the specialized First Instance Court for commercial lawsuits if one of the disputing parties is foreign, as this court has the jurisdiction to handle air transport disputes. Conversely, if both parties are Iraqi nationals, their disputes will be subject to the general First Instance Court.

Section Three: Obstacles to the Judicial Mechanism in Resolving Air Disputes

Challenges Related to the Cost of Litigation and Procedures

First: The Cost of Litigation and Legal Procedures

Technical methods make it difficult for ordinary people to participate without legal representation, which is often expensive. Hiring costly legal minds is akin to buying justice, and litigation is described as a gamble or a luxury that only the wealthy and those with access to specific resources can afford. Practices such as legal jargon, the use of formal procedures, and submitting requests at various stages of the legal process are daily routines for lawyers, complicating the easy resolution of disputes.

Another potential challenge in litigation is the inability of air passengers who are victims of a plane crash to initiate legal proceedings and obtain the necessary evidence to prove fault against air carriers. This is stipulated in the Warsaw Convention of 1929 and Iraqi law, where the burden of proof falls on the consumer.

Proving fault against air carriers in cases of accidents or violations of passenger rights is a difficult task. It is often challenging, if not impossible, to gather all the technical evidence required to establish fault against the air carriers.

Second: Time Limitation

In all claims brought against an air carrier, Article 29 of the Warsaw Convention of 1929, which corresponds to Article 53 of the Montreal Convention of 1999, states that:

1. The right to compensation is forfeited if the claim is not filed within two years from the date of arrival at the destination, or from the date
2. The aircraft was supposed to arrive, or from the date on which the transportation ceased
3. The law of the court to which the claim is submitted determines the method for calculating this period.

This means that legal actions taken by air passengers against an airline must be initiated within two years from the airline's arrival at the destination, or the date it was supposed to arrive, as seen in the case of "Oshevire v. British Caledonian Airways Ltd".

It was affirmed that the limitation period stipulated in Article 29(1) cannot be suspended or interrupted, even by agreement between the parties. A decade later, this principle was reinforced in the case of "UTA French Airlines v. Fatayi Williams". The court reached the same conclusion, thus the researcher believes it is important to inform air passengers of the limitation period within which they can file legal claims against airlines. Providing passengers with this information encourages them to decide when to take legal action against airlines that violate their rights .

At times, air crash victims engage in negotiations for compensation, which can take several years. Therefore, it is safer for victims to file a civil lawsuit seeking compensation within the two-

year limitation period while negotiations are still ongoing. This way, even if the negotiations fail, they can pursue the legal option.

Third: Delays in Court Proceedings

Delays within the judicial system present a significant challenge for consumers. The prolonged litigation process, coupled with the specialized nature of aviation, makes it difficult for consumers to choose litigation as a means of dispute resolution. According to a lawyer, aviation-related litigation has a unique nature that is not well understood, even by most judges and lawyers. This is one of the reasons aviation cases are often filed incorrectly by lawyers, contributing to delays in reaching a verdict.

Furthermore, even when legal practitioners are familiar with the procedures for filing a claim, most air travelers lack the motivation to pursue their rights in court due to the slow and somewhat biased judicial system. The bias tends to favor Iraqi Airways, being a state-owned public sector company, and there is a tendency to encourage the aviation industry as a public service still in development.

In practice, dissatisfied air passengers or those involved in an air incident may choose to pursue their rights through litigation if the air carriers fail to pay compensation or cause undue delays. However, this option generally seems unsatisfactory due to delays. For example, in the following case, a passenger filed a lawsuit against Royal Jordanian Airlines, Iraq Branch, in the Court of First Instance for Commercial Claims on December 17, 2019. However, the litigation process before the Court of Cassation, after the defendant appealed the ruling of the Court of First Instance, is still ongoing more than a year after the lawsuit was filed.

The postponement and delay of judicial proceedings negatively impact the role of the judiciary and even the judges themselves. There is no doubt that legal practitioners and judges are partners in the justice system. Therefore, the lack of diligent prosecution of cases by lawyers will inevitably slow down the judges' role in ensuring the swift trial of cases.

Fourth: Consumer Ignorance of Their Rights

In general, understanding the technical components of goods and services provides consumers with an added advantage and negotiating power. Conversely, the ignorance of some air passengers poses a significant obstacle to consumer protection and the resolution of their disputes.

Abdullah Al-Sulaiti believes that the awareness rate among air passengers is very low. He added that some passengers are not educated to understand their rights and how to enforce them through the courts. He stressed that the lack of consumer awareness and ignorance of their rights constitutes a major challenge.

An illiterate passenger is vulnerable to abuse and will not be able to successfully file a lawsuit against an airline, and some passengers cannot even communicate in the event of a dispute and this affects the entire settlement process. For example, if passengers who do not understand English read and understand the terms and conditions of the airline ticket, they will not know the implications of the contract and how to pursue their rights.

Conclusion

The study concluded that the judicial mechanisms in Iraq related to resolving consumer disputes in the aviation sector face a set of challenges that hinder the effective achievement of justice. The most prominent of these challenges are the high costs of litigation and the length of the procedures, which increases the burden on air passengers seeking to protect their rights. Moreover, proving fault against air carriers is a difficult task for the consumer, especially considering the legal

complexities and lack of available technical evidence. These obstacles call for reforms to modernize the judicial system. The study also showed the lack of legal awareness among air passengers regarding their legal rights and ways to claim them. Many passengers lack sufficient knowledge about their rights in the event of a dispute with airlines, which negatively affects their ability to defend their rights or claim appropriate compensation. This is considered one of the main challenges that must be addressed to achieve comprehensive protection for air consumers. The study recommends the need to implement urgent judicial and legislative reforms aimed at improving the current situation. These reforms should include reducing litigation costs and simplifying legal procedures.

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