

## International Aviation Law Material

### KEYWORDS:

Aviation law, air carrier liability, flight delay, international carriage, damage and inconvenience, passenger rights

©©©

## THE AIR CARRIER LIABILITY IN CASES OF PASSENGER AND BAGGAGE DELAYS UNDER 1999 MONTREAL CONVENTION

### GENERAL PROVISIONS

The **air carrier liability** for the **passenger and baggage delays in the carriage by air** is governed either by the 1929 Warsaw Convention or by the 1999 Montreal Convention.

It is about **contractual liability**, i.e. liability based on non-performance at all or non-duly performance of the contractual obligations, services. There is a **legal linkage** between the air carrier [1] and the passenger [2], i.e., contractual relationship. The proofs of the **contractual relationship** are the ticket confirmation, ticket, invoice, etc.

The 1929 Warsaw Convention [3] has many supplements (The Hague protocol of 1955, Guadalajara convention of 1961, Guatemala City protocol of 1971, Montreal protocols of 1975), so that is why sometimes it is called **Warsaw-system Convention, Warsaw-based Convention**. The 1999 Montreal Convention supersedes (prevails, has priority over) the 1929 Warsaw Convention. In this article, we will discuss the air carrier [4] liability under the 1999 Montreal Convention.

The full name of the 1999 Montreal the convention is “**CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR**”.

**Armenia** has ratified the 1999 Montreal Convention in **2010**.

The one has to know that the 1999 Montreal Convention is applicable to **INTERNATIONAL CARRIAGE** of passengers, baggage [5], cargo. For example, Abuja-Lagos flight is not considered international, but Kigali-Lagos flight is considered. On the ticket, the place of departure (KGL, Kigali) and the place of arrival, destination (LOS, Lagos) are indicatives which will help to understand the flight status [6].

So, according to article 19 to the 1999 Montreal Convention, **the carrier is liable for DAMAGE OCCASIONED BY DELAY in the carriage by air of passengers, baggage or cargo.**

It derives from the 1999 Montreal Convention that **3 types of delays** in the carriage by air are covered: **passenger delay, baggage delay and cargo delay.**

It means that air carrier is liable only if:

- 1) there is **damage**,
- 2) damage is caused to either **passenger, their baggage or cargo**,
- 3) damage is a direct consequence of the carriage by air **delay (chain of causation).**

In this case, the passenger has to show, prove **the existence of damage** (evidential damage).

According to article 22 to 1999 Montreal Convention:

- in the case of damage caused by delay as specified in Article 19 in **the carriage of persons (passenger delay)**, the liability of the carrier for **each passenger is limited to 4694 Special Drawing Rights (the sum is subject to indexation)**. This means maximum payout to each passenger is 4694 SDR which is equivalent to **5346 US dollar**. The link for currency calculation is listed below [7].

- For the **damage caused to the baggage** in the result of the delay (**baggage delay**) is equal to 1131 SDR, that is to say, up to 1288 US dollar **for each passenger** [8].

- for the damage caused to the cargo in the result of the delay (**cargo delay**) is equal to the to 19 SDR, that is to say, up to 22 US dollar **per kilo** [9].

### **SUGGESTION**

Unfortunately, the 1999 Montreal Convention does not discuss the liability of air carrier for just delay **itself, non-performance in due time**. Under this rule, if the flight is delayed, the passenger would be entitled to the compensation. This is called **liability based on caused INCONVIENCE**.

The 1999 Montreal Convention does not consider just **loss of time as damage per se**. Today the 1999 Montreal Convention regulates air carrier **liability based on caused DAMAGE only**.

However, sometimes the passenger losses his/her time without other damages, but they are not entitled to the compensation under the 1999 Montreal Convention, as the **actual damage** does not exist. Anyway, this is not a justifiable solution.

### **A piece of EU best practice**

In the European Union, under Regulation 261/2004 [10], the passenger is entitled to compensation **up to 600 Euro for a delayed flight** (the delay itself, per see,) **if the flight is delayed a minimum 3 hours**.

In Sturgeon versus C. F. case, European Union Court of Justice stated “that passengers whose **flights are delayed** may be treated, (...) **the right to compensation**, as (...) they suffer, on account of a flight delay, **a loss of time equal to or in excess of three hours**.”

This is the example that just loss of time, which itself causes inconvenience to the passenger, is enough to assess that passenger is entitled to compensation (under circumstances).

## Conclusion, tips

Summarizing the above-mentioned, we can note that to get **compensation** from the air carrier for the **passenger or baggage delay**:

1. The passenger has to prove **the existence (actually proven) of the damage** caused by delay in the carriage by air (*the burden of proof is the passenger duty*).

2. The air carrier **has 2 options**:

2.1 Compensate

2.2 Refuse to compensate invoking that (*the burden of the proof is the air carrier duty*):

A) They (air carrier, its employees, agents, etc.) have taken **all reasonable measures** to avoid the damage or

B) **it was impossible** for them to take such measures or

C) it was **contributory negligence (with a defined limit, based on contributory effect)**.

3. If the air carrier proves the existence of 2.2 (A or B), the passenger has 2 other options, invoking that the damage resulted from **an act or omission of the carrier, its servants or agents [11]**:

A) done **with intent** to cause damage or

B) done **recklessly and with the knowledge** that damage would probably result.

4. If the court assesses the existence of 3 (A or B), the air carrier has just one way: **compensate**.

## NOTES, CLARIFICATIONS

[1] The air carrier is the company (legal entity). Most of them in their names use the words “**airline**”, “**airways**”, “**air**” etc. For example, British Airways, Ethiopian Airlines, Azman Air.

[2] The passenger is a **human being, a person** with who the air carrier has a contractual relationship.

[3] The full name of 1929 Warsaw Convention is “**Convention for the unification of certain rules relating to international carriage by air**”.

[4] The air carrier can be: **contractual and actual**.

**The actual air carrier** is the company which exercises the flight, i.e. actually transports passengers from A point to B point.

**The contractual air carrier** is the company which has signed contract (one of the signatory party to contract), issued ticket. On the ticket, the name of a contractual air carrier is printed.

Until proven otherwise, **it is deemed** that the contractual air carrier is the actual carrier (in a legal environment).

The 1999 Montreal Convention regulates the **mutual liability** issues (based on circumstances), under Articles 39-41.

[5] Baggage can be: **checked and unchecked**.

**Checked baggage (luggage)** is the property of the passenger which passenger does not carry with him/her to the cabin, but it is checked and carried by aircraft.

**Unchecked baggage (luggage)** sometimes is called “**cabin luggage**”, “**carry-on**”, “**hand luggage**”. It is the property of the passenger which passenger carries with him/her to the cabin.

{6} Each international airport has its **3-letters IATA (International Air Transport Association) code**, such as:

**KGL** (This is the Kigali International Airport in Kigali city, Rwanda),

**LOS** (This is the Murtala Muhammed International Airport in Lagos city, Nigeria),

**EVN** (This is the Zvartnots International Airport in Yerevan city, Armenia),

**CDG** (This is the Paris Charles de Gaulle Airport in Paris city, France).

[7], [8] and [9] Special Drawing Right or SDR: This is a **so-called conditional currency** named in the 1999 Montreal Convention to avoid mentioning the currency of a specific country. Each time, when compensation matters arise, SDR has to be converted into local currency.

In the website of the **International Monetary Fund (IMF)** we can access to the currency exchange, calculation: [https://www.imf.org/external/np/fin/data/rms\\_sdrv.aspx](https://www.imf.org/external/np/fin/data/rms_sdrv.aspx)).

By the way, in the 1999 Montreal Convention, the compensation payouts are fixed “4150 SDR”. “1000 SDR” and “17 SDR” relatively, but according to the Convention **the limits of compensation must be reviewed (indexation, monetary inflation, consumer price indices)**.

So as of 2019, which is the last calculation (review) the relevant monetary caps are “4694 SDR”, “1131 SDR” and “19 SDR”.

[10] The full name of the Regulation is “**Common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights**”.

[11] The numeration 3 does not mean that the covered suggestions cannot be presented initially, in the first place with the first suggestion. It depends on 2 factors: **voluntary and mandatory**.

**The voluntary factor** is based on the choice of a claimant, i.e. the strategy of the party (trick).

**The mandatory factor** is based on the necessity of national legislation (procedural law), as in some countries, the claimant is not allowed to make changes to the claim, adduce evidence at some point of proceedings.