



ECONOMIC AND LEGAL ASPECTS OF AIR TRANSPORT IN TURKEY

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Abstract:

The aviation sector has highlighted the importance of economic and legal regulations in conjunction with the changes in the conditions of competition with the acceleration of globalization. The regulations in the aviation sector directly or indirectly affect the airline operators, which is critical as a result of its effects on the economic systems of the countries. Legal responsibilities in terms of influencing passenger rights and competition law issues; has a natural impact on shaping aviation regulations, sector dynamics and competitive conditions which is effecting the dynamic structure of the sector. This study aims to examine the economic and legal aspects of air transportation carried out in Turkey and to contribute to the literature as a result of the researches.

Keywords:

Aviation Economy, Aviation Sector, Carrier's Legal Responsibilities

JEL Codes: K23, E22

1. Introduction

The aviation sector is one of the fastest developing sectors in the world and plays a pioneering role in international and intercontinental areas. The aviation sector has grown annually by an average of over 10% with the policies and measures implemented since 2003. This growth has also provided economic development by carrying billions of passengers with the purpose of vacation or business by scheduled airlines. Airline transport has now become accessible for most people towards all destinations around the world quickly, comfortably and safely.

Airlines are vital to the global economy and are important for the integration of the united world economy. Airlines are striving to reduce costs and improve service quality (Ahipaşaoğlu & Arıkan, 2003). Air transport is a major global employer, depending on a focus by efficient service elements on passengers and integrated and balanced performance in aviation values chain (Göktepe 2015). The increase in the demand for freight and passenger transportation creates economic benefits in terms of sustainability of global competition in the international area by affecting the distances that are burdened with it.

The aviation sector is quite complicated by the fact that it has a dynamic, broad and rigid structure. Provision of the security required for proper running of this structure constitutes an important part of the rules, national and international regulations for the sector. Due to the international nature of the aviation industry, intergovernmental organizations that have been established since the beginning have required that the rules governing this structure be uniform, and some international agreements and additional standards have been established to achieve this goal. The rules with international character which are presented for the approval of all member states are important for the globalization and development of aviation (Sirmen, 2014).

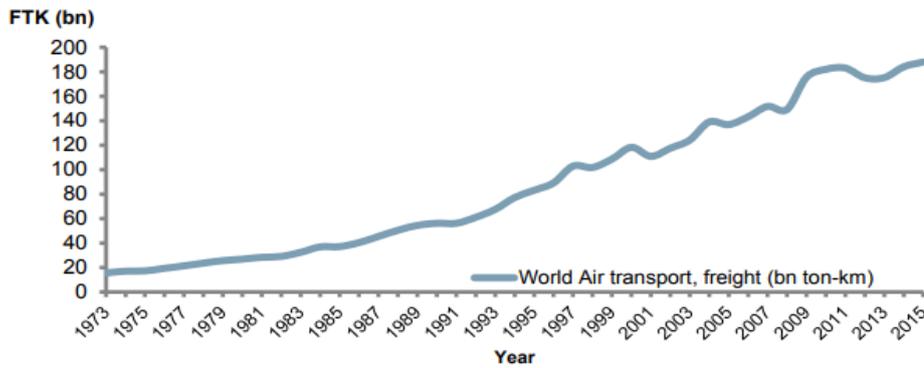
2. Economic Aspects of Air Transport in Turkey

Air transport plays a key role in supporting an economy's long-term economic growth with a positive impact on productivity and economic performance, facilitating the integration of an economy into the global economy. There

are over 67 billion of flying passengers on the global scale in the timeframe from the past to the present day. As of the end of 2015, there are 32.8 million commercial flights on approximately 52.964 routes between 17.370 cities. In other words, in commercial flights, the distance traveled in just one year is approximately 6.7 trillion kilometers. In IATA (2016) report, it is announced that approximately an additional growth of 3.6% per year is predicted in the air transport over the next twenty years. The annual growth rate of 3.6% corresponds to approximately 3.1 billion new passengers in the next 20 years.

The aviation sector in Turkey has performed three times as much as the world average in terms of growth. While the global average growth rate of the industry over the past twelve years is around 5% and in Turkey it is 15%. While employment in the sector in Turkey was 65 thousand in 2003, it exceeded 187 thousand as of the end of 2014. In the last twelve years, the sector's total turnover has increased by 12 times to reach 26.6 billion dollars from 2.2 billion dollars. The airline industry continues its growth momentum with the increase in the number of airports, airplanes and passengers in Turkey. While the number of active airports in Turkey increased from 26 in 2003 to 55 in 2015, the number of passengers in domestic flights increased 9 times, reaching 97.5 million in 2015 and the total number of passengers using airline increased 5 times, reaching 181.4 million by the end of 2015.

There are 13 airlines in the civil aviation sector in Turkey, which are engaged in cargo transport or freight shipment. 422 aircrafts which was owned by airline companies, as of 2014 came to level of 489 in 2015 with an increase of 15.87%. 464 of these aircrafts are passenger and 25 are cargo aircrafts which have a seat capacity of 90.259 in passenger side and 1.759.600 tonnes of freight capacity at cargo side. According to the total number of passengers, Turkey has risen to 13th place in 2016, while it constituted the 16th largest market in the world in 2015. According to IATA estimates, by 2033, Turkey is expected to be among the top 10 markets in the world by the total number of passengers. According to the Figure I; World air transport grew by about 5% from the end of 2013 to the first quarter of 2015 (EU Air Transport Report 2016). In the second quarter of 2015, world air cargo volume grew by 2% per annum in parallel with the decline in global trade and industrial production.



Source: World Development Indicators

Figure I: Global Air Freight Volumes

Domestic passenger and freight traffic has been continuously rising in Turkey according to IATA reports and the Turkish domestic market is expected to grow by 5.8% over the next five years. In the next 20 years, it is estimated that the highest growth rate among the first 10 domestic markets will be in Turkey with an average increase of 7% (IATA Report, 2016).

The aim of the air transport activities is to provide the right service to the customer in the right place, at the right time and the right price. Today, customers are becoming more selective with the developments in customer demand, needs and knowledge levels, and therefore service expectations are diversified (O'Brien, Jones, 2015). In Turkey, the share of air transport that has remained at 2.5% level for many years has increased to 7.82% in domestic passenger transportation, considering the share of transportation between transportation types. In this development, the contribution of regional aviation policies, which started to be implemented in 2003, is inevitable. Within the scope of the 2023 targets, it is foreseen that the share of passenger transport on domestic routes will reach to 14% (T.C. Ulaştırma Bakanlığı, 2009).

The revenue structure of the airport varies according to whether the terminal and airport operators are the same or not, according to the group of the airport, the characteristics of the population where it is located, the services and

activities provided in the airport and terminal, and the tax legislation of the country where it is located. According to all these factors, each airport has its own income structure (Yağmur, 2015). The civil aviation sector develops accordingly with the increase in economic value, number of passengers and gross profit. In this respect aviation sector has a huge progression in last century which has been built on the most advanced technologies and has become an integrated part of world economy (Milde, 2012).

Air transport also has a catalytic effect on the other sectors. 15.5 million direct and indirect employment opportunities have been created through the expenditures of international passengers traveling with air transportation (Cento, 2013). Appendix I shows the total freight traffic at the airports in Turkey between the years 1980-2016 that covers cargo, post and baggage.

There have been several studies indicating this issue in the literature of aviation economics such as;

(Vijver, et al. 2015) study analyzes the relationship between air passenger transport and regional development in the European NUTS2-regions by Granger causality analysis over the period 2002-2011. The result of the study shows that both directions of causality occur among the European urban regions.

(Obioma, et al., 2013) research examines the catalytic economic effect of air transport industry through economic development of global trade in Nigeria. The paper shows that air transport industry plays an important role in the aspect of work and leisure around the globe.

(Ishutkina, 2009) study identifies the factors that help to describe the role of government in changing air transport industry and its impact on economic activity. The results of this study can help investment and policy decisions of air transportation industry in developing economies.

(Tam & Hansman 2002) study describes the economic impact of air transportation in the United States. The dramatic increase in the use and characteristics of air transport since deregulation suggests that the nation has evolved to have a strong dependence on the air transportation system for regional economic and social structure.

3. Legal Aspects of Air Transport in Turkey

By air transport; there may be disputes in conjunction with different legal orders in terms of passengers, aircrafts, and realization of transport contract. In this context, more than one state has international authority. If there is no authority agreement between the parties, the plaintiff will evaluate between more than one international court and choose the law of the most advantageous court. Due to the international nature of aviation, national courts frequently encounter with cases containing foreign elements. In this case, the international authority of the courts to handle the disputes on the aviation issue is on the agenda. This situation which is called as Forum Shopping is an undesirable development in international private law (Fawcett, et. al, 2008).

Due to the technical developments, the necessity of taking precautions against sky hazards since the I. World War, states needed to take their own air space under absolute sovereignty of the state. Thus, after the I. World War, international aviation regulations have been on the agenda. States, participating in the Paris Peace Conference on Civil Aviation during the months following the first regular air services between Paris and Brussels on 22nd of March in 1919 and between Paris and London on 25th of August in 1919, documented the International Public Law issues on Aviation that they agreed such as the sovereignty of states over their airspaces, international flight right and international record and restrictions, by the Paris Convention dated 13th of October in 1919, which is the first International Civil Aviation convention. The Paris Convention on Civil Aviation, which governs International Public Law, followed by 1926 Madrid and 1929 Havana Convention, and these International Public Law rules remained in effect until the Chicago Convention was adopted on 17th of December in 1944 (SHGM, 2017). Transport contract is defined as a contract for the carriage of passenger or cargo by airline for a fee (Kırman, 1990).

The transport contract, in the literature, was compared to representation, service, warehouse (protection) and lease contracts until the 1950s; but these views were not effective. Because in the transport contract, unlike the lease contract, the movement of the vehicle is in question; unlike the warehouse contract, the protection is not the primary act but the movement; unlike the service contract, the carrier is not under the order and control of the sender; unlike the contract of agency, fee is a primary element (Ülgen, 1987). In the period of the Law No. 6762, it is stated that it is similar to the exception contract (Arkan, 1982).

In the representation contract, the wage is not a compulsory element; representation may be made compromised or uncompromised (Zevkliler, 2010). In fact, the history of representation shows that this contract is made free of charge, in the name of love, respect and friendship. However, in the ware transfer contracts, wage is an essential element. This contract is a perfect synallagmatic contract but not an imperfect synallagmatic contract. Although agent, as a rule, is personally obliged to pay the debt within agency contract; the carrier is not personally obliged to pay the debt under the scope of transport contract (Emiroğlu, 2003). Time is not important for agency; while it is an essential component for service contract (Çağhan, 2017).

In Turkish law, there are debates about whether the transport contract is closer to the exception or the agency. The generally accepted view in the doctrine puts forward that the transport contract is among exception contracts, considering the importance of carrying properties to a certain destination (Çağhan, 2017).

As a result of globalization and the legal regulations on airline transport, both passenger and cargo, which do not keep up with the times, the old Warsaw Convention is required to be reviewed (Tarman, 2013). In order to modify the Warsaw/Hague System for addressing new requirements, in terms of provisions governing the responsibility of the carrier in particular, Convention for the Unification of Certain Rules of International Carriage by Air was adopted on 28 May 1999. The convention is also known as the Montreal Convention. The Montreal Convention entered into force on 26 March 2011 for Turkey with 105 counterparts.

In Turkey, which is a party to the Montreal Convention, if Turkish Judge encounters a dispute due to carriage of passenger, burden and luggage by airway in the international arena, he/she will independently determine whether it is within execution area of the Convention as per article 1/f.2 of the International Private and Civil Procedure Law (Sözer, 2009). The execution area of the Montreal Convention is limited to the contracting states in terms of country and responsibility of the carrier undertaking the carriage of persons and goods on the basis of a carriage contract for a fee only, in terms of subject (Tarman, 2013).

Carrier's liability is, as a rule, limited liability. If the carrier is held liable, he/she is obliged to pay the actual loss incurred and the upper limit of this payment has been set (Article 22). In addition, according to the Warsaw Convention, it is foreseen that the carrier will be unlimitedly liable if certain circumstances arise and the liability will be unlimited (m.25), in particular if the damage occurs due conscious or gross negligence of him/her or his/her employees.

With The Hague Protocol, the second sentence of article 20 of the Warsaw Convention was abolished so that one of the evidences of release entitled to the carrier was reduced and the provision of article 22, which sets the upper limit of the liability of the carrier, was amended and the limit of liability was increased. It is accepted that the carrier's employees can also benefit from limited liability with the addition of article 25.

The conditions of the Carrier's Responsibility for Damage to Passenger (Article 17) are also clearly stated in the contract. In order for the carrier may be held responsible for the damage caused by the death or injury of the passenger, the accident causing the death or bodily injury must occur when the passenger is inside the aircraft. The issue that needs to be addressed here is not if the accident occurred on the aircraft but if the accident occurred while the passenger was on the aircraft. Based on the contract with the carrier, the passenger is deemed to be on board the aircraft, in the sense of article 17, from a boarding until getting off the aircraft. In order for the air carrier to be responsible for the damage as a result of death or bodily harm of the passenger, it is sufficient if the accident occurs while the passenger is boarding or getting off the aircraft (Sözer, 2006).

At this point, concept of "accident", in the 17th of the Warsaw Convention, is important. The convention did not define the concept of accident (Berkley, 2000). An accident is described as an event that is specific and has an effect on the relationship from the outside during the course of a certain event and which is not anticipated for it (Karp, 2000). Since it is generally referred to as accident in the Warsaw Convention, carrier is responsible for the damages not only due to the accidents related to operation of the aircraft but also other accidents. For this reason, it is expressed that the relation of causality between the accident and the operation of the aircraft should not be sought (Ülgen, 1987).

In doctrine, a distinction is generally made between accident or unexpected situations and compelling reasons. In the Warsaw Convention, what is in question is the events of the same nature with accident or unexpected situations. In this case, in the Warsaw/Hague system, the carrier will be held accountable for damages caused by events which constitute an accident or unexpected situation, but not be held accountable for damages caused by events constituting a compelling reason (Ülgen, 1987).

4. Conclusion

The increasing importance of airlines in human life has intensified the interest of investor enterprises. The vast majority of enterprises that have indirect or direct economic impact in the sector are targeting new investments in the short and medium term ahead. In addition to these new investments, it is also seen that there are some plans such as incorporating some other existing businesses or making investments, renewal and expansions in various fields as laboratories and training halls within the enterprise.

The aviation sector is one of the important elements of economic growth as a sector that provides indirect or direct value to many sectors outside itself. This rapidly growing sector also holds an important place in terms of employment in the world of crisis periods. Aviation sector faced a tremendous change in Turkey after 2003 and has experienced a significant growth especially in recent years. The aviation sector, which has such a worldwide impact and highly critical for investments, is naturally on the agenda from the legal point of view.

Aviation Law should be established in accordance with international law and appropriate with national laws. This obligation is valid for 188 member countries and the member countries are obliged to notify all member countries if they have different practices. Meaning of signing the International Civil Aviation Convention (ICAO Doc.7300) is to officially announce that international practices have been accepted. The international convention also imposes responsibilities within the scope of the countries at the same time. Countries are also responsible for each other within these responsibilities. Reason of the emergence of this responsibility is that aircraft of another member state, which will pass through the territories of many member states in a short span of time, bears the responsibility on behalf of its own state against sovereignty, security, peace and third persons. Determining the responsibilities arising from the international convention by the national law is the way of determining chain of responsibilities and those responsible in this sense.

It could be claimed that resolving the investment disputes through arbitrators is a combination where both private and public law gain ground, in the context of subject and legal contracts that provide basis for it. It can be emphasized that investment arbitrage, in the framework of such international conventions, is not a concept that can only be addressed in the context of private law and in particular public law. It is assessed that the contribution to the doctrine can be made by examining g private law - public law over investment arbitration in a holistic way.

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Appendix I: Total Freight Traffic in Turkey (1980-2016)

Freight(Tonne)			
Year	Total	Domestic	International
1980	75 442	32 231	43 211
1981	95 068	44 017	51 051
1982	92 279	40 062	52 216
1983	98 404	39 356	59 049
1984	121 568	42 091	79 477
1985	133 082	47 254	85 828
1986	153 349	50 856	102 493
1987	188 489	63 573	124 916
1988	226 813	73 088	153 725
1989	270 983	93 900	177 083
1990	301 403	99 549	201 854
1991	245 123	72 843	172 280
1992	363 992	96 554	267 438
1993	461 836	135 300	326 536
1994	491 750	151 440	340 310
1995	576 920	171 552	405 368
1996	652 565	182 476	470 089
1997	791 780	212 000	579 780
1998	725 910	209 488	516 422
1999	686 014	217 556	468 458
2000	796 627	226 356	570 271
2001	763 156	171 411	591 745
2002	880 133	181 198	698 935
2003	931 191	188 936	742 255
2004	1 123 108	262 647	860 461
2005	1 249 555	315 858	933 697
2006	1 346 989	373 055	973 934
2007	1 546 025	414 192	1 131 833
2008	1 644 014	424 555	1 219 459
2009	1 726 345	484 833	1 241 512
2010	2 021 076	554 710	1 466 366
2011	2 249 474	617 835	1 631 639

2012	2 249 133	633 074	1 616 059
2013	2 595 316	744 027	1 851 289
2014	2 893 000	810 858	2 082 142
2015	3 072 831	871 327	2 201 504
2016	3 076 914	857 335	2 219 579

Source: General Directorate of State Airports Authority, General Directorate of Civil Aviation Authority