

## Chapter 30

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# TURKEY

*M Ali Kartal*<sup>1</sup>

### I INTRODUCTION

Civil aviation in Turkey has undergone major reforms within the past decade enabling private enterprises to operate scheduled domestic services. Air travel, both domestic and international, has become cheaper and more accessible resulting in phenomenal traffic growth as more and more people choose it over traditional motor transport. This has also been reinforced by the construction of new airports and expansion of existing ones in many cities throughout Turkey. On an international level, Istanbul has become an important hub because of its convenient geographical location at the crossroads of the Commonwealth of Independent States (CIS) and the Middle East, and it has attracted very fast-paced growth in transit traffic.

The largest operator in the field is the flag carrier Turkish Airlines, which is a state-owned entity. Notable competitors are Pegasus Airlines, Atlasjet Airlines and Onur Air, all of which operate both domestic and international scheduled services.

The Ataturk International Airport in Istanbul is the major hub, for both international and domestic flights. Construction of a new international airport is underway and it is expected to enter into service in 2017. The second largest airport in terms of passenger traffic is Antalya on the Mediterranean coast, and it is coordinated during the summer season. The bulk of traffic there comes from tour operators catering to nearby vacation resorts. There are scheduled air services in operation to about 40 airports in Turkey.

The main regulatory instrument for civil aviation is the Civil Aviation Act of 1983. This act pertains to all aspects of aviation, such as the regulatory authority, safety, accident investigation, licensing of operators and airports, flight crew licensing, basic principles of flight operations, liability, contracts of carriage by air, property rights and other limited rights *in rem* on aircraft, aircraft registration and insurance.

A notable exception is flight crew employment legislation. There is a modern labour code in Turkey with adequate protection in line with the policies of the European Union;

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1 M Ali Kartal is a senior partner at ErsoyBilgehan.

however, flight crew are exempted from this, owing to the unique characteristics of the flight environment. Presently, employment and labour law issues concerning flight crew are subject to the employment contract section of the Code of Obligations, which is general in nature and cannot adequately address the unique environment and issues of working in aircraft as cockpit or cabin crew. This is considered by the industry to be an important shortcoming in aviation legislation.

The regulatory authority for civil aviation is the Directorate General of Civil Aviation (DGCA), which is a department of the Ministry of Transportation, Maritime Affairs and Communication. The DGCA has wide regulatory powers as prescribed in the Civil Aviation Act.

Slot allocation at fully coordinated airports is made under the relevant regulation enacted by the State Airports Administration. The regulation complies with Council Regulation (EEC) No. 95/93 on slot allocation principles.

The high rate of traffic growth makes Turkey an attractive market for aircraft manufacturers and financial institutions. Turkey has ratified the Cape Town Convention on International Interests in Mobile Equipment, which is expected to further facilitate leasing and financing of aircraft. The ratification took effect in December 2011. The primary benefit of the Convention to aircraft lessors is that repossession, deregistration and export of aircraft that are taken out of lease are now much easier as they can be performed by the lessor without the requirement for consent from the lessee. Before the ratification, this was a slow and problematic process as it would require a court decision if the lessee objected.

## **II LEGAL FRAMEWORK FOR LIABILITY**

Liability of air carriers is regulated by the Civil Aviation Act and international treaties to which Turkey is a party. International treaties to which Turkey is a party have the force of law, just as with any other national legislation.

### **i International carriage**

Turkey has ratified the 1999 Montreal Convention and the Convention became effective in March 2011. As mentioned above, the Convention is deemed national legislation and as such, is applicable to international carriages as defined by the Convention. Previously, Turkey was a party to the 1929 Warsaw Convention as amended by the Hague Protocol and the Montreal Protocol No. IV.

### **ii Internal and other non-convention carriage**

Liability of the carrier in domestic or non-convention carriages is subject to the Civil Aviation Act.

The carrier is liable for damages in cases of bodily injury or death of a passenger, if the accident causing the injury or death occurred in the aircraft, or during boarding or disembarking.

The carrier is liable for damage or loss to registered baggage or cargo, if the loss or damage occurred in the aircraft or on the ground at an airport while the baggage or cargo was still in custody of the carrier.

The carrier is also liable for damages resulting from delays in the carriage of passengers, baggage and cargo.

The liability of the carrier is strict, in other words, liability exists even if the carrier has not acted negligently. On the other hand, the carrier will be relieved from liability if the carrier proves that they have taken all possible measures to prevent the damage from occurring or that it was impossible to take all such measures.

The liability of the carrier is limited, unless it is proven that the carrier or its agents acted with the intent of causing damage or recklessly with the knowledge that damage may result. The relevant Article of the Act provides that the limit will be determined according to the 1929 Warsaw Convention and other conventions and protocols to which Turkey is a party. Now that the Warsaw Convention is no longer applicable, this Article should now be interpreted as defining the limits according to the 1999 Montreal Convention.

For the carrier's liability to be limited as provided, the carrier has to issue and submit a ticket bearing the name of the carrier and the passenger, date and place of issue, date and place of departure and destination, the price of the ticket, and a statement that liability is limited under the Civil Aviation Act.

Liability of agents and employees of the carrier is also similarly limited, where it is proven that they were acting within the scope of their duty.

### **iii General aviation regulation**

The liability regime for air carriers is also applicable to general aviation operators. There is no distinction between different types of aerial vehicles.

### **iv Passenger rights**

The DGCA has, within the scope of its mandate and authority, issued a Passenger Rights Regulation, which came into effect on 1 January 2012. This regulation is very similar to Regulation (EC) No. 261/2004.

### **v Other legislation**

Turkey has in place legislation governing protection of competition, protection of the environment, tax laws, corporate governance, labour, social security and similar laws that must be observed by all business entities.

Perhaps of higher relevance for airlines, employment and social security law imposes special liabilities on employers on issues of safety, compensation and work-related accidents. Employers have strict liability for any injuries or death of employees in the course of their duty.

## **III LICENSING OF OPERATIONS**

### **i Licensed activities**

Any activity that can be conceived of that involves flying an aircraft or any other type of aerial vehicle requires the person or entity operating the flight to have an appropriate Aircraft Operator's Certificate (AOC).

AOCs are issued by the DGCA in accordance with the relevant operator licensing regulations adopted by the DGCA. There are several different categories and subtypes of AOC.

The most stringent licensing requirements are to be found in the Regulation on Commercial Air Carriage Operators, known in the industry as 'SHY-6A'. SHY-6A was renewed entirely in November 2013.

Commercial operators are classified as air carriers, non-scheduled-only air carriers, cargo-only air carriers and air taxi operators. There are different minimum capital and equipment requirements for each category. The procedure for applying and obtaining these licences are quite long and onerous. There are stringent requirements for the qualifications and experience of key personnel. The entity applying for an AOC for commercial air carriage is required to demonstrate its financial and operational capabilities for operating commercial aircraft.

The second major category of operators is to be found in the General Aviation Regulation, known as 'SHY-6B'. This was also entirely renewed in May 2013. Basically, any type of flight operation that is not commercial carriage of passengers and cargo, falls into this category. Major subcategories are flight training, aerial work and amateur aviation activities. Operation of business aircraft also falls within this category, provided that the entity holding the AOC is a shareholder of, or some or all of its shares are owned by, another entity.

Requirements for obtaining a general aviation AOC are generally much less stringent than for a commercial AOC.

## **ii Ownership rules**

An aircraft (or other type of aerial vehicle) is deemed a Turkish aircraft if its owner is a Turkish citizen.

Aircraft owned by legal persons other than companies registered in the Turkish Commercial Registry, are deemed Turkish aircraft if the majority of the members of its governing body are Turkish citizens. These entities would typically be associations, foundations, trade unions and similar organisations.

Aircraft owned by Turkish companies are deemed Turkish aircraft if the majority of the persons authorised to direct and represent the company are Turkish citizens, and more than half of the voting shares are owned by Turkish citizens.

Both the Regulation on Commercial Air Carriage Operators and the General Aviation Regulation requires applicants to own a minimum number of aircraft registered in Turkey. This means that any entity or person who wishes to have an AOC in Turkey is required to fulfil the aforementioned ownership rules.

## **iii Foreign carriers**

The Civil Aviation Act provides that rules applicable to foreign operators performing air transport services between Turkey and foreign countries, shall be determined by the Ministry of Transportation, taking into consideration bilateral and multilateral treaties to which Turkey is a party, and also the principle of reciprocity.

In practice, foreign operators are required to obtain flight permits prior to operating flights into or out of Turkey. Scheduled or charter air services operators are able to obtain prior permits for each tariff season. Other operators need to apply preferably five days, in urgent cases at least 48 hours, before the planned flight. The operator has to be in possession of a AOC issued by its own state.

Points of contact, required documentation and procedures for obtaining flight permits can be found in the Turkey aeronautical information publication published and maintained by the State Airports Authority.

## **IV SAFETY**

Turkey is a member of Eurocontrol, the European Aviation Safety Agency and the European Civil Aviation Conference and implements directives and regulations of these organisations.

All operators are required to implement a continuing airworthiness programme in compliance with the Regulation on Continuing Airworthiness and Maintenance Liability, which was issued by the DGCA in December 2012. This requires operators to put in place and implement a continuous airworthiness scrutiny and compliance programme. This responsibility can be outsourced to organisations accredited by the DGCA, and named as a Continuing Airworthiness Management Organization.

Accident reporting and investigation rules in the Civil Aviation Act are in harmony with the ICAO Annex 13. Incidents or accidents are investigated by an accident investigation commission, the members of which shall be appointed by the Ministry of Transportation, from among persons known to be experts in their field.

There are several detailed regulations and directives issued by the DGCA concerning safety management, reporting of incidents and similar subjects.

## **V INSURANCE**

The Civil Aviation Act requires all national and foreign operators landing in or departing from Turkey to carry liability insurance to cover damages that may result from their operations for carriage of passengers, baggage and cargo, and also damages to third persons. The details of mandatory insurance are determined by the DGCA in two separate regulations.

Operators of aircraft registered in Turkey are required to submit valid policies and policy renewals to the DGCA. The DGCA is authorised to verify the validity of such policies directly with the insurer. Failure to maintain valid insurance will entail grounding of the aircraft. Breach of the requirement for a second time will entail cancellation of the AOC.

Foreign operators are required to submit their valid policy when applying for a flight permit. Non-compliance will result in denial of a flight or landing permit, and grounding if the aircraft is already on the ground in Turkey.

Presently, the minimum coverage limits for air carriers is 250,000 special drawing rights (SDR) for bodily injury and death of passengers. These amounts are lower for light aircraft (maximum take-off weight (MTOW) of less than 5,700 kg) that are not under a commercial AOC, and for balloon operators. Minimum coverage for baggage per passenger is 1,000 SDR and for cargo per kilogramme, it is 17 SDR.

## **VI COMPETITION**

Competition in Turkey is governed by the Law on Protection of Competition, which was promulgated in 1994. This Law is quite similar in its philosophy and system to the EU rules on competition.

Infringements of competition law are investigated by the Competition Commission, which has wide powers of investigation, and may act on its own accord or upon complaints. Since the proliferation of private and low-cost carriers within the domestic market, there have been quite a few investigations in the aviation sector. None of them have resulted in

spectacular fines, but the state-owned airline, THY, was more frequently investigated than others, mainly for allegations of abuse of dominant position, predatory pricing and several other acts considered restrictive.

Although to this day no significant decision or fine has been issued by the Commission, the Commission's decisions do point out areas where certain practices may lead to infringements of competition rules. The general stance of the Commission is considered to be fair and equitable to THY's competitor carriers, which probably feel justifiably threatened by THY's historical, market dominance.

## **VII WRONGFUL DEATH**

Wrongful death entitles close relatives of the deceased person to moral compensation. The magnitude of moral compensation is left to the discretion of the judge. Since there is no explicit and hard set rule in the relevant codes, such as the Code of Obligations, for determining the extent of moral compensation payable upon wrongful death, a comprehensive body of jurisprudence has developed in this respect. The paramount rule that emerges from jurisprudence is that moral compensation should not be so high as to cause an inordinate increase in the wealth of the person receiving it. It is beyond dispute that wrongful death in relation to aviation activities will entitle the claimant to moral compensation. This being said, the degree of negligence of the party who caused the death, the nature and degree of the relationship between the claimant and the deceased, the circumstances of the death and other reasonable, relevant factors will affect the level of compensation. Traditionally and culturally, the magnitude of moral compensation awarded in Turkey has remained very low when compared to European countries and the United States.

## **VIII ESTABLISHING LIABILITY AND SETTLEMENT**

### **i Procedure**

The customary forum for settlement of disputes is the civil court. Air carriers would invariably be merchants according to the Commercial Code, therefore the correct court for filing a claim against an air carrier or other commercial operator would be the commercial court. Where the operator is not a merchant, the correct court would be the court of first instance.

Arbitration, although available as a forum, is almost never used unless a contract includes an arbitration clause. We have not, to this day, seen or heard an aviation claim being referred to arbitration.

Mediation has very recently been introduced to the Turkish legal system, by way of the Law on Mediation in Civil Disputes, which came into effect in June 2013. At present it has not been much used, although it is an available avenue.

For claims under the Montreal Convention, jurisdiction rules in the Convention will apply. For claims under the Civil Aviation Act, there is no specific provision on jurisdiction. This being the case, the general rules of jurisdiction provided in the Code of Civil Procedure will apply. According to these rules the claim can be filed either at the court where the carrier is domiciled, or at the place of performance of the contract of carriage. Under Turkish law, the place of performance of a contract of carriage is the place of destination. Claims based on tort can be filed at the domicile of the plaintiff, or the place where the tort occurred.

The statutory limitation period for claims arising from air carriage is two years, starting from the date on which the carriage was, or should have been completed. However, in cases where the case involves an accident or incident on which an official investigation report has to be issued, the time limit does not start running until the report is published.

The carrier is primarily liable for any claim, but it is also possible to sue the carrier's employees. Even in such a case, the carrier has strict liability for the acts or omissions of its employees. Manufacturers are also known to have been joined in liability cases. Regardless of the apportionment of liability between defendants, all of the defendants are liable to pay the entire award to the claimant. It is, however, possible for the party who made the payment, to have recourse against the other defendants in proportion to the extent of their contribution to the cause of the accident.

## **ii Carriers' liability towards passengers and third parties**

Liability towards passengers is established according to the Montreal Convention in cases concerning international carriage, and the Civil Aviation Act in cases concerning domestic carriage. In both cases, the scope of the carrier's liability against passengers in the event of injury or death are determined according to the Code of Obligations.

Liability for damage to third persons or to property other than the aircraft is provided for in the Civil Aviation Act. The rules stipulate that the operator of an aerial vehicle is liable for damages caused to third parties. The registered owner of an aircraft is presumed to be its operator, unless proven otherwise. This liability is strict and unlimited. However, the operator may be relieved from liability in part or in full where they can prove that acts or negligence of the aggrieved party caused or contributed to the damage.

## **iii Product liability**

Manufacturers of aircraft and aviation equipment may have liability towards passengers if they are found to be negligent in the design or production of their products and such negligence is the main or contributory cause for bodily injury, death or property damage. The legal basis for this would be tortious liability as described in the Code of Obligations.

Aircraft owners would not be liable against passengers for any defect in the aircraft and equipment that they own, unless they are also the operator of the aircraft. The registered owner will be considered the operator of the aircraft, unless it is proven otherwise. Therefore, the burden of proof rests with the owner.

## **iv Compensation**

According to the Code of Obligations, an injured passenger has the right to be compensated for medical expenses, loss of earnings, loss of or decrease in earning power arising from permanent disability, and losses arising from impairment of economic future.

In cases of death, dependants of the passenger are entitled to compensation for losses arising from deprivation of the financial support of the deceased. If the death does not occur immediately, medical expenses and loss of earnings can also be claimed.

In all cases, the passenger, and relatives of deceased or seriously injured passengers, are entitled to moral compensation. The magnitude of moral compensation is determined by the judge taking into account the circumstances of the case.

When considering material compensation, the most significant items of loss are the earning power and age of the deceased or permanently injured passenger. As a very rough rule of thumb, the level of this compensation is the annual income of the passenger, multiplied

by his or her statistical life expectancy. Income in this case refers only to income obtained by professional or other work; income from assets is not a factor. In determining annual income, it is not relevant whether the passenger was employed at the time of death. What is important is the average earning power of a person with similar qualifications and profession. Even in the case of illiterate and unemployed persons, the minimum wage is used as the minimum figure for material compensation. As a guideline the annualised minimum wage in Turkey is around \$5,500.

The next important item is the number and ages of dependants of a deceased passenger. A surviving spouse is entitled to a certain portion of the income, and children are entitled up to a certain age. Note that dependants can include siblings, parents, or anyone else who, morally and traditionally, can be reasonably expected to enjoy material support from the deceased passenger.

Dependants need not be heirs, this special form of compensation has no relevance to matters and issues concerning inheritance.

Moral damages are a sensitive issue. There are no specific guidelines in the Code of Obligations concerning moral damages. In jurisprudence, it is generally accepted that moral damages should be of such a magnitude as to be sufficient to at least alleviate the suffering and impart a minimal degree of consolation to the aggrieved party. It is said that it should not be so large as to make its recipient rich, nor should it be so high as to financially cripple the liable party. This is a very controversial issue. Moral damages awards are becoming higher and higher in Turkey, although not nearly as high as in the United States or Europe. As a very basic rule of thumb, it is very unlikely for moral compensation to be any higher than material compensation. In the majority of cases, it would be less than half the material compensation.

All employees in Turkey are included in the social security system. If the passenger had social security cover, he or she would be entitled to medical treatment, temporary disability payments and permanent disability benefits if permanently disabled. In cases of death, dependants would be entitled to death benefits, which may be in the form of a pension.

The Social Security Administration has a right of recourse to the carrier or other liable parties for the total or present value of these social security benefits. These amounts are, however, deducted from the material compensation to be paid by the carrier or other liable parties.

## **IX VOLUNTARY REPORTING**

There have not been any initiatives in Turkey to encourage voluntary reporting of incidents.

## **X THE YEAR IN REVIEW**

Double-digit growth in air carrier operations means an even higher growth in the number of flight crews, both in the cockpit and the cabin. This has brought in its wake increased labour litigation over the past few years. Also there is a severe shortage of pilots qualified as captains, and employment of foreign pilots has become quite widespread.

The DGCA had in the past been criticised for inadequate provision in terms of its resources, oversight and rule-making. This was to some extent true in that the phenomenal growth of the industry in Turkey caught everybody unaware. However, with its improvements

and vigilant attitude over the past few years, the DGCA seems to have caught up with the requirements of the industry, and service levels and the quality of its provision are now generally regarded as being much improved.

The criminal charges brought against the directors of Atlasjet and some of the directors of the DGCA following the crash of an Atlasjet MD88 in Isparta in 2008 is still continuing. All of the defendants are accused of lack of oversight leading to the 'controlled flight into terrain' crash, which killed all occupants.

The emergence of Istanbul as a major hub has also benefited maintenance, repair and overhaul (MRO) businesses. The past several years have witnessed the establishment of new MROs that are not only serving Turkish operators, but also attracting other operators from the Middle East and the CIS. Growth in this sector is also high, which means that there has been an increase in maintenance-related disputes and litigation.

## **XI OUTLOOK**

The DGCA's efforts to streamline regulatory instruments particularly in view of the increasing volume of general aviation operations (aerial work, balloon operations, commercial seaport and seaplane operations) have been remarkably intense especially within the past year, which has been a welcome relief for general aviation operators. Still, capacity-wise there is a long way to go as general aviation operators are increasingly being squeezed out of major airports because of the sheer volume of air carrier traffic.

An important development all sector participants are anxious to see would be the passing of an employment law addressing the unique characteristics of the professions that fly for a living. There is a draft bill before the Parliament, but it is not known at this time when it may pass the committees and reach the general assembly. This would certainly be a welcome development both for aviation professionals and their employers.

**M ALI KARTAL**

*ErsoyBilgehan*

M Ali Kartal was born in Istanbul in 1961. He obtained his law degree in 1984 at the Ankara University faculty of law in Ankara, Turkey. He completed his training at the Aybay & Aybay law firm and was admitted to the Istanbul Bar in 1987. He worked as in-house counsel for IBM Turkey between 1989 and 1993. In 1994 and 1995 he attended flight schools in Turkey and the United States and obtained his commercial pilot's licence, instrument rating, multi-engine rating and flight instructor certificate. He worked as a flight instructor in the United States for a brief period. Upon his return to Turkey he worked as a private practitioner until 2002. In 2002 he joined Aybay & Aybay as a partner. As of June 2016, he is a partner at ErsoyBilgehan. His practice and experience is focused on commercial law, law of obligations, maritime law, aviation law and insurance law. He has extensive experience in litigation. He is bilingual in Turkish and English. He is a court accredited expert witness on aviation matters.

**ERSOYBILGEHAN**

Maya Akar Center  
Buyukdere Cad. 100–102, K. 26  
34394 Istanbul  
Turkey  
Tel: +90 212 213 23 00  
akartal@ersoybilgehan.com  
www.ersoybilgehan.com