

# Civil Liability of the Aircraft Towers Controller (A comparative study)

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The air traffic control profession is one of the most dangerous jobs to its responsibilities and obligations. There are numerous legislations that seek to determine the responsibilities of the towers observer. Aviation control requires obtaining a lot of information that helps the air controller to make quick and critical decisions. Although international control operations are of the utmost importance at the present time, the legislation varied in determining the jurisdiction of the court that examines issues that may arise from working in this field. The legislator's keenness in determining the responsibility of the air controller for faults that cause harm to others, and those types of cases were dealt with in accordance with the provisions of the Civil Code. Show us the shrinking number of studies that study the responsibilities of the air controller and determine the tasks that fall to him. There is a legislative vacuum in the subject of determining the terms of reference for the responsibilities of the air controller.

**Key words:** *Civil, liability, aircraft towers, controller.*

## Introduction

The air traffic controller is defined as the person who works in the control tower and operates the air traffic and organizes it to ensure that the aircraft operate well and maintain the security and safety of the aircraft and the people inside it, the air traffic control profession is one of the most important professions that underpin air transport operations, that importance is closely related to the annual travel rates, as the higher levels of air travel, (*Jamal, 2012*) the greater the importance of air traffic and the importance of the air traffic profession, in addition to the scientific and technical progress that the air navigation institutions enjoy in helping the air controller and facilitating the air monitoring process by using satellites and advanced radar devices and digital data technology and the following automatic calculations, (*Zuhair, 1999*) software and other equipment, which makes it imperative of these people are carefully chosen in order for this profession to be practiced by qualified individuals to do air

traffic control activities, they are air traffic controllers and require them to have the nature of the job to develop their skills continuously through continuous training that is compatible with the development of air traffic control and the growth of the global air transport industry and therefore, the determination of civil responsibility on the controller is a very important topic, which is what we will try to search and determine this responsibility accurately. *(Ahmed, 1967)* The responsibility of the air controller is a focal point in the legal field, as it is the right of the most accurate issues and the most important legal problems resulting from air accidents and the most concerned and preoccupied with the jurisprudence and elimination of both, as they are closely related to many legal aspects connected with each other, what make the process of determining responsibility and identifying its provisions from the extremely difficult and accurate matters, *(Abdel-Hamid, 2004)* as it is one of the most important topics that need careful research in order to be able to correctly determine the air controller's responsibility, with the lack of studies in such topics, the research was a big difficult on the researcher and represented a challenge for him at the same time, and the air controller's responsibility faces problems related to the jurisdiction which results from conflict between laws and countries, in addition to the many problems related to state sovereignty. *(Abu Zaid, 1983)* Whereas in the case of an accident by air traffic control that follows the state in which the accident occurred, then in that case the law of that country will be applied and it is possible that many problems will occur if an accident occurs in a region in which the air navigation service is provided by a foreign country or from Before the air navigation services of the other country which provide their services within the country in which the accident occurred and the question that arises is what law is applied in this case? *(Tala Oqab, 2005)*

The importance is due to the air traffic control profession being one of the most important pillars in the air transport industry, and that importance increases with the increase in annual travel rates, which makes it of special importance that needs to be studied in all aspects, including the subject in research, and the air traffic controller profession from the most professions need a mentally and physically effort, due to it is one of the professions that suffers the stress during work, as the responsibility of the safety of aircraft passengers depends on the ability of the air controller to focus and his correct judgment in the aircraft operation, *(Murtada, 2017)* Likewise, those working in air traffic control, especially in crowded airports, are subject to many occupational pressures due to the amount of ongoing responsibility, due to the amount of work required to complete in addition to the decisions that they take, which require them to obtain a big degree of accurate information to help them to make a critical decisions quickly, and overlap the tasks of staff in the airspace and its interlocking imperative the necessity of defining the responsibilities and knowing the obligations that all its members must adhere to, each according to the work he does and the responsibility attached to it. *(Abdel-Hamid, 2004)* The air controller work is full of pressure, and this study aims to reach a set of goals, including: establishing the responsibility of the air controller in legal and jurisprudent theories, explaining the special provisions that were

unique to it in some cases related to the air traffic control process, and an indication of the extent of civil responsibility that falls on the air controller when it is violated with his responsibilities and examining the various legal problems it raises. (Alaa, 2020)

## Literature Review

### *Air Traffic Control Service*

This service is achieved by achieving a legal separation between the aircraft, i.e. working to achieve a separation that is calculated in time and there is a calculated number of minutes separating the aircraft that fly in the air so that collision is impossible, this is regardless of the difference in speeds and the faults of the air traffic control officers who are working in this field, which are almost non-existent on the international level, in order to ensure the best trained competencies after passing many medical, psychological and linguistic tests, and the air traffic control service is divided into (Ahmed, 1967) Three sub services:

**Local traffic control:** are the movements of the aircraft that move in the sky, i.e. in the sky of the airport or on the movements ground, and this task is undertaken by the airport tower, which in turn contains many corridors and sub-movements and the airspace, which is used to create maneuvers to take off and land and the tower is the center of that The circle with a radius equal to the range of vision that the eye can see. (Zuhair, 1999)

**Approach control service:** This service achieves separation between aircraft in a fictitious circle called the Controlled Band Circle and the diameter of this circle ranges between 10-15 km and includes between them and each of them the ends of the air routes to and from the international airport of heavily movements and in most cases the radius of that circle is determined (Mufleh, 1998) Max which reaches 25 kilometers when approaching, and this area is called the approaching area and this area is crowded with air traffic movement, so it is possible that it is narrowing whenever we get close to the airport so that it is called the bottle neck area, and it is worth noting here that in the case of bad weather conditions and when the pilot cannot see the passage stops Sight-dependent tower action and automatic landing. (Alaa, 2020)

**The area control Service:** This service is intended to monitor the status of the aircraft, guide them, and achieve separation between them while flying in forked airways in the aircraft information region until the aircraft adjacent to the neighboring flight region is delivered to complete its journey and all this is done through supervision by the control tower where a network is formed that spreads throughout the territory of aviation and that region is called the zone control center and these are the most dangerous units, and they are the most dangerous units in terms of the serious of responsibility and the large number of aircraft dealing at the same time. (Abdel-Hamid, 2004)

### ***The Nature of the Air Controller Work***

The air controller's mission is to ensure the aircraft flying in the sky of the countries are kept away from the paths of each other and maintain the safety of their landing and takeoff, and that the flights of the aircraft are known to the air controller and scheduled in front of him, as he works in front of the radar screen that shows the locations of the aircraft and in the event the plane is ready to take off waiting for the observer's permission (**Mohamed, 1978**) The air that checks to make sure its path is clear and then allows it to take, during the work, the air controller monitors the conditions of wind and rain so that he can warn the captain in the event of any air changes after the takeoff and the exit of the aircraft from the airspace of the airport, (**Halperin, 1972**) throughout the flight the plane moves from air controller to another observer until it reaches the arrival airport, where it appears the aircraft at the arrival airport is on the radar of the air controller, who in turn is to prepare the landing process for the aircraft according to the arrival schedule. (**Jamal, 2012**) In emergency cases, the landing is initialized according to its importance, the air controller clarifies the path of entry to the airspace of the airport and works to guide the pilot of the aircraft in the conditions of wind and rain, and then gives permission for the aircraft to land, and after the successful landing of the plane, the airport administration receives the process of stopping it at the right place. (**Abu Zaid, 1983**) According to the breadth of air traffic and the presence of large-sized aircraft that accommodate a large number of travelers, the responsibility of the air controller has become extremely important and accurate, and air control centers operate 24 hours a day without holidays, so the air controller's work periods are divided into shifts for each shift period of 8 hours During working hours where the air controller must be attentive, alert, and interact quickly with a number of aircraft that fall under its responsibility and that is constitutes a psychological burden and a source of physical pressure on the air controller , (**Mufleh, 1998**) the air traffic control mission is affiliated to the Civil Aviation Presidency in the Ministry of Defense and Aviation, and the Presidency has specialized institutes to prepare, licensing and rehabilitation of air traffic controllers, usually the general secondary school required to join these institutes, so it was necessary to clarify the basis for the air traffic controller. (**Tala Oqab, 2005**)

### ***Air Traffic Controller Responsibility and Air Traffic Safety***

The report of the air traffic controller's responsibility regarding air traffic safety represents an important guarantee to enhance the required safety operations in the field of air transport, as the safety and security factors that air transport users expect to become play a major role in choosing the air as the most appropriate way through which transport can take place and are also the most secure certainly it is done only through a responsibility report for the person who is the main adherent to safety requirements and is the air controller since there is no obligation without liability, (**Abdel-Hamid, 2004**) the responsibility of air traffic control

agencies and workers has emerged today and has become a responsibility that occupies a large space in the field of civil aviation, due to the importance of air traffic control activities of extremely dangerous safety, safety and efficiency as well as the regularity of civil aviation where the practical significance of this serious matter in terms of its counterpart, which is related to the jurisprudential controversy that prevailed in large periods of time and continues to this day in the absence of international legislative regulation as well as internal about the responsibility of air traffic controllers, (*Jamal, 2012*) as well as assigning the matter to general rules, for this reason, the responsibility of the air controller remains a thorny issue despite the many attempts made by some countries and some other regional organizations. There is no doubt that the responsibility of the air controller has gone through many obstacles that added a great atmosphere of ambiguity and complexity to the air controller responsibility for the faults that Commits it, (*Nadia, 2001*) whether it is regulatory or other obstacles imposed by modernization factors and advanced technologies that relate to the country's woman, the responsibility of the air controller faces problems related to the jurisdiction that results from conflict between laws between countries, as well as many problems related to the sovereignty of the state, since in the event of an accident by air traffic control that follows the country in which the accident occurred, in this case a law will be applied (*Zuhair, 1999*) That country and it is possible that many problems will occur if an accident occurs and occurs in a region in which the air navigation service is provided by a foreign country or by air navigation services that follow the other country and that provides its services within the country in which the accident occurred and the question that arises is any law applied in This Status ?, Is the country replaced the accident law or the law of the defendant? (*Murtada, 1969*)

Some argue that although there is no urgent need at this time because there is legislation enacted in order to achieve an explicit and real response to this problem, it is desirable that legislation be enacted to achieve a certain degree of standardization of the system relating to the responsibility of air traffic control agencies where this is what is currently lacking in light of the differences between the various national legislations regarding the responsibility of air traffic, which is already sufficiently large in order to work to find a major obstacle to reaching an international agreement. (*Ahmed, 1967*) Likewise, international legislation must ensure that arrangements are made for a solution Disputes between the countries that meet the rules contained in Article 84-88 of the Chicago Convention, which have been signed by 156 countries but for indicative resources, it is possible to include a similar form of acceptance by each country separately, wherever it adopts the model text as a model for the various local legislations, (*Starck, 1988*) and this will undoubtedly lead to the unification of dispute resolution systems that may arise between countries that have arisen according to the Chicago Agreement or what is stated in the model text. Of air traffic control agencies in order to serve the traffic, (*Abdel-Hamid, 2004*) the issue is further complicated by the fact that there are differences between countries regarding the type of court that will settle the dispute. For

example, administrative courts in France will have jurisdiction due to the governmental status of the agency that will be responsible for providing air navigation services, while in Switzerland we find that such a case awaits the court Swiss supreme and in the United States of America, it is necessary to consider the cases brought against air traffic controllers before the district courts, while the *(Abdel-Hamid, 2004)* German civil courts are competent to consider these types of cases, and this shows the extent of the discrepancy in the competencies in those cases in terms of determining the judicial body competent in issues related to air traffic control, With regard to the responsibility of the air controller for the risks related to the safety of air traffic, although there is no international legal regulation governing the responsibility of the air controller, we find that the air controller is subject to civil responsibility, and the air controller is facing a degree of responsibility In the event of a grave fault or if he committed the obligations of criminal responsibility. *(Alaa, 2020)*

### ***The Basis of the Air Controller Responsibility***

Despite the incapacity case in which the idea of fault appeared as a basis for civil liability and its failure to guarantee fair compensation to those affected in many types of jurisdiction before the judiciary, due to the difficulty of proving fault, which led to the loss of the rights of many of those affected, and they are mostly people like workers in work accidents, despite the most inferior economic situation, it has become something of a fascination with jurisprudence and the judiciary alike with a theory that bears the blame when it appears due to the boldness of the solutions adopted by the French justice system and its fairness, *(Murtada, 2017)* but with all that, material responsibility, headed by a theory that carries a liability in its two editions, has not taken into consideration risks versus profit or new risks, as this judiciary remained insistent in its rulings on considering the fault an ethical basis for civil liability in spite of the difficulties encountered in determining compensation for those affected, however, *(Starck, 1988)* this does not prevent that this judiciary showed some manifestations of being affected by the idea of assuming responsibility, especially in the responsibility for the work of others in the field of responsibility for non-living things, and more precisely, where we find in many provisions what this theory raises directly or indirectly, by the way the French judiciary has reached the same practical results that supporters of substantive responsibility say, *(Zuhair, 1999)* through the resort of the French judiciary to the expansion of the idea of fault, so he accepts any mistake, even if it is simple and sometimes even stops it, that it has nothing to do with the moral truth of the deviation in Behavior, until responsibility has arisen, as this jurisdiction expanded the interpretation of Article 1383 French civilians in a manner that equated negligence with willfulness and saying of wrongful acts when it was considered *(Nadia, 2001)* that the occurrence of some accidents indicates in itself that it was a mistake that caused it, this was evident in the field of work accidents and transport accidents by trains, in these and other accidents, it is only necessary for the injured person to prove that the accident occurred, so that he has proven the fault

implicitly and one of the famous cases in which the French courts took the idea of a tacit fault was the ruling issued by the first civil circuit of the Court of Cassation French on June 27, 1960, (*Murtada, 1969*) what is summed up in its facts is that a doctor who treated one of his patients uses rays, and the use of these rays resulted in the patient suffering several damages that led to the latter with sue against the doctor to ask him to compensate him for the damage he suffered, but the report of the expert on the case was not interrupted by the existence of a personal fault on the doctor's side and all that the report indicated is that the radiation damage may be caused by the slide of one of the valves of the internal radiation apparatus, which led to an excessive amount of radiation leaking into the patient's body, Although the expert's report did not reach the evidence of negligence or default on the doctor's side, (*Abu Zaid, 1983*) the French Court of Cassation ruled for him and the appeals court had to search for the cause of the defect, which was in fact due to the failure to catch one of the valves, and the court concluded that the damage, the injured person would not have happened if the operator operating the device had tightened it carefully, and that in all assumptions the physician is the person who committed the mistake and required compensation, refer to the punishment of Al-Khasawneh, (*Murtada, 2017*) so the air controller is responsible for any fault that may result from radars or any of the devices used that may give false information that results in the observer committing a mistake resulting in harm, and while the judiciary in France has changed its theory wrong acts, however, he soon returned to taking, even under another name, the theory of actual or realistic fault or implied fault in the field of transport accidents in facilitating the injured in this type of accident in obtaining compensation, in contradiction to the general rules, Which requires the injured to establish evidence of the defendant's fault. (*Jamal, 2012*)

One of the manifestations of the French judiciary being affected by this theory is also the saying of the assumption of fault in many applications of responsibility, as well as the strictness in the conditions of force majeure, and resorting to the application of the rules of contractual responsibility instead of tort liability, by saying that there is a commitment to safety when he sees that the rules of the latter guarantee for the aggrieved Eliminating the injured person from the burden of compensation while depriving him of the application of the rules of tort liability, (*Mohamed, 1978*) thus reducing the proof of fault, Where it is sufficient for the contractual responsibility to merely not fulfill the contractor's commitment without the need to prove wrong on his part, while the Egyptian judiciary has enriched some of the rulings of its primary courts with a theory of liability, (*Starck, 1988*) but the Egyptian Court of Cassation refused to adopt this theory in refusal, perhaps the most important of the categorical judgments categorically significant in He refused to adopt the theory of bearing responsibility, the ruling issued on 11/15/1934, which stated in one of its reasons. .. (*Zuhair, 1999*) The Egyptian law does not stipulate what makes a person responsible for the risks of his property that he does not wear any of the default, but rather this type of responsibility is subsequently rejected by the Egyptian legislator, so the judge - depending on Article 39 of the

Civil Court Arrangement Regulations - may not rank him as Justice justifies it, and accordingly, *(Nadia, 2001)* it is not correct to refer to this article except in the event that the Shariah does not address a subject, and it is not subject to explicit, comprehensive provisions that prevent the government from civil liability for an accident that occurred to one of its workers on the theory of responsibility of the risks of the king in which does not confined on what all see and did not report it, so he created a kind of responsibility that he did not and if you have had violated the law. *(Abdel-Hamid, 2004)*

### ***Civil Liability***

The observer asks a civilian toward the entity subject to it and others about the faults that occur from him in the control, and determined his civil responsibility towards the audited entity is determined based on the legal position he occupies, some have argued that the relationship between the air controller and the subject has a contractual relationship and its source is the work contract, *(Mohamed, 1978)* However, the air controller is not considered to be used by the supervised authority, but this opinion is critical of the lack of basic elements of the agency, the agent performs legal actions on behalf of the client so that their effects are spent on the custody of the client while the air controller takes over the control and these activities from a physical rather than legal nature, to submit a report in which he expresses his opinion and the authority remains free to rely on this opinion or reject it, where he does not carry out his duties in the name of and for the account of the audited entity, *(Abdel-Hamid, 2004)* but he monitors with complete independence and impartiality without receiving any instructions on how to perform his mission as is the case in the agency, and some have argued that it is up to the judiciary to adapt the responsibility of the air traffic controller according to the basis on which it is based in each case as well a civilian air controller shall be responsible to others for faults that result from the process of monitoring and auditing, According to the general rules for tort liability, the responsibility of the civil auditor is determined with respect to others. *(Abu Zaid, 1983)*

### ***Comment***

One of the most important legal problems caused by air accidents, the most concerned and disturbing work of jurisprudence and elimination alike is the research issue that we have with us in this research subject, which relates to the civil responsibility of the air controller for his mistakes because of its association with many interrelated legal aspects, which made the responsibility issues, and determining its provisions is extremely accurate and difficult, and more urgent and the need of concerted efforts and the search for the most effective solutions to determine the responsibility that closely affects the air controller, *(Abdel-Hamid, 2004)* where the air traffic control profession is one of the most important pillars in the air transport industry, and that importance increases with the increase in annual travel rates, which makes

it of special importance that needs to be studied in all aspects, including the subject in question, Also, workers in the air traffic control, especially in crowded airports, are subject to a set of professional pressures and the volume of responsibility on an ongoing basis, due to the amount of work required of them to be accomplished along with the decisions that they make that require them to provide a High degree of information, helps them to make decisions quickly and decisively. *(Tala Oqab, 2005)*

## Results

1. The air traffic control profession is one of the most dangerous jobs to its responsibilities and obligations.
2. There are numerous legislations that seek to determine the responsibilities of the towers observer.
3. Aviation control requires obtaining a lot of information that helps the air controller to make quick and critical decisions.
4. Although international control operations are of the utmost importance at the present time, the legislation varied in determining the jurisdiction of the court that examines issues that may arise from working in this field.
5. The legislator's keenness in determining the responsibility of the air controller for faults that cause harm to others, and those types of cases were dealt with in accordance with the provisions of the Civil Code.
6. Show us the shrinking number of studies that study the responsibilities of the air controller and determine the tasks that fall to him.
7. There is a legislative vacuum in the subject of determining the terms of reference for the responsibilities of the air controller.

## Conclusion

1. The research field requires do many studies in this field, and for this reason we recommend researchers to do many studies and research that contribute to determining the responsibilities that fall on the air controller.
2. The necessity of conducting periodic studies to determine the main axes of the air controller responsibility and to update them continuously to include all changes that may occur on that responsibility.
3. The air controller must obtain strong and accurate training in order to be able to determine and master his job.
4. Specific and clear laws must be established that help to the responsibilities of the observer of the aviation tower observer.

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