

The Legal Protection of the Rights of Person With Disabilities in International Civil Aviation

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Abstract. Every human being has the same rights in every aspect of life, including in civil aviation. These rights also belong to persons with disabilities. As a transport mode, aviation has to recognize and accommodate passengers who happen to be persons with disabilities. They have the same international rights, such as accessibility, and also full and effective participation and inclusion in society. This includes freedom of movement and freedom of choices as stipulated in Articles 3.c and Article 3.f of the United Nations Convention on the Rights of Persons with Disabilities. This means that persons with disabilities must have the same access to the air transportation.

This paper discussed the legal protection of rights of disabilities in international civil aviation.

We found that the international instruments regarding civil aviation have regulated the protection and fulfillment of the rights of persons with disabilities in air transport. However, these various international instruments are only recommended practices and manual, which means they are not legally binding to the States, airports, and airlines. Thus we recommend the ICAO to develop an official standard that has legal binding power and must be implemented by the ICAO member countries, along with airports and airlines all over the world. This standard must be continuously updated so that they can continue to provide protection and fulfillment of rights of persons with disabilities in international civil aviation.

Keywords: legal protection, rights of disabilities, international civil aviation

INTRODUCTION

Before the Wright Brothers succeeded in creating a 120-foot, 12-second flight at Kitty Hawk, North Carolina - the first powered flight in a heavier-than-air machine, people had flown only in balloons, airships, and dirigibles [1], [2]. But the first international commercial flight was carried out in 1919 between Paris and London by the Farman Company of France. This company then introduced the sustained passenger services later in 1919

between Paris and Brussels, then followed by a new schedule to new destinations such as Copenhagen, London, and North Africa. These international commercial flights then raise the urgency to form such international agreement on civil aviation. The first truly international agreement on civil aviation is the Convention relating to the Regulation of Aerial Navigation, signed on 13 October 1919 at the Peace Conference held in Paris. This convention laid down preliminary technical standards for international civil aviation and established the *International Commission on Air Navigation (ICAN)* – considered by some as the forerunner to ICAO. This convention was later superseded by the Convention on International Civil Aviation, signed at Chicago on 7 December 1944. [3] And currently, aviation has become a very important and needed mode of transportation in human life. This is because aircraft are a safe, fast, and convenient mode of transportation for travel throughout the world.

Modes of aircraft transportation are not only used by a sighted person but are also used by people who have different abilities and conditions. These people are often referred to as "people with disabilities", or disabled (differently-abled people), now known as "person with disabilities" [4].

Article 1 Convention on the Rights of Persons with Disabilities stated that "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". Meanwhile based on the International Classification of Functioning, Disability, and Health, "disability is defined as problems in the body function or structure such as a significant deviation or loss, a reduction, an increase, or an excess" [5].

As part of a human being, persons with disabilities have the same rights in every aspect of life with other people. This includes civil aviation. As a transport mode, aviation has to recognize and accommodate passengers who happen to be persons with disabilities. They have the same international rights, such as accessibility, and also full and effective participation and inclusion in society. This includes freedom of movement and freedom of choices as stipulated in Articles 3.c and Article 3.f of

the United Nations Convention on the Rights of Persons with Disabilities. This means that persons with disabilities must have the same access to the air transportation. Therefore, this paper discussed the legal protection of the rights of disabilities in international civil aviation.

METHOD

The research method used in this paper is a normative juridical method, using a statute approach and a conceptual approach. The data used are secondary data obtained through library research. The data is processed and analyzed using qualitative analysis methods and then presented in the form of systematic writing [6], [7].

RESULT & DISCUSSION

To date, there is no unity of opinion regarding the definition of disability. Defining disability is complicated as it is “complex, dynamic, multidimensional and contested” [8], [9]. In 2001, the International Classification of Functioning, Disability, and Health defined disability in two concepts as follows:

- a) “Disability is characterized as the outcome or the result of a complex relationship between an individual’s health condition and personal factors, and of the external factors that represent the circumstances in which the individual lives. Because of this relationship, different environments may have a very different impact on the same individual with a given health condition. An environment with barriers, or without facilitators, will restrict the individual’s performance; other environments that are more facilitating may increase that performance. Society may hinder an individual’s performance because either it creates barriers (e.g. inaccessible buildings) or it does not provide facilitators (e.g. unavailability of assistive devices)”.
- b) “Disability is an umbrella term for impairments, activity, limitations, and participation restrictions. It denotes the negative aspects of the interaction between an individual (with a health condition) and the individual’s contextual factors (environmental and personal factors)” [10]

These two definitions govern complex interconnection between the individuals and environment [11].

Then on 13 December 2006, the UN General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD). This convention came into force on 3 May 2008. As of 28 May 2020, it has 163 signatories and 181 parties. CRPD is the first legally binding instrument on disability issues. The purpose of this convention is clearly stated in Article 1 “... to promote, protect and ensure the full

and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. CRPD applies to all persons with disabilities, including persons with mental or psychosocial disabilities. Article 3 states that some of the general principles of CRPD are respect for individual autonomy; non-discrimination; full and effective participation and inclusion in society; and accessibility. These principles apply and must be obeyed by the state parties, as stated clearly in Article 4 concerning general obligations [12], [13].

Relating to transportation, stated in Article 9 concerning accessibility, CRPD stresses that persons with disabilities must be able to live independently and actively participate in every aspect of life. Thus, States Parties are required to take appropriate measures to ensure that persons with disabilities have access such as to the physical environment, to transportation, and other facilities and services open or provided to the public, on an equal basis with others. This is to apply in air transportation. Persons with disabilities must have the same access to the air transportation. CRPD also suggests that airlines need to engage with the principles of CRPD so as to avoid conflict the international human rights agreements. [14], [15].

Provisions on the access of persons with disabilities to air services and facilities are regulated in Annex 9 of the Chicago Convention 1944. In the newest edition i.e. Fifteenth Edition (October 2017), access to air service for persons with disabilities are contained in Standard 8.34 and Recommended Practices 8.35 – 8.40.1. Standard 8.34 obliges the Contracting States to take necessary steps to ensure that persons with disabilities have equivalent access to air services. In Recommended Practice 8.35 requires the Contracting States to introduce provisions by which aircraft coming newly into service or after major refurbishment should conform, where aircraft type, size, and configuration permit, to minimum uniform standards of accessibility with respect to equipment onboard aircraft which would include movable armrests, onboard wheelchairs, accessible washrooms, and suitable lighting and signs. Then Recommended Practice 8.36 requires that disability aids required by persons with disabilities should be carried free of charge in the cabin or as priority baggage. So it is with service animals accompanying persons with disabilities should be carried free of charge in the cabin, on the floor at the person’s seat, as stated in Recommended Practice 8.37. As per Standard 8.38, the Contracting States should immediately notify ICAO on the restriction of the transport of battery-powered, so that they can be included in Doc 9284 (Technical Instructions for the Safe Transport of Dangerous Goods by Air). As in the Recommended Practice 8.39, the persons with disabilities should be permitted to travel without the requirement for

medical clearance, unless they are in a condition where it is not clear that they are fit to travel and could compromise their safety or well-being or that of other passengers. Then in Recommended Practice 8.40 and 8.40.1 states that in principle, persons with disabilities should be permitted to determine whether or not they need an assistant, and if so they should give advance notice to the carrier [16].

Furthermore, ICAO also released the Manual on Access to Air Transport by the Disabled Passenger (the first edition was released in 2013). The purpose of this manual is to recognize, protect, and fulfill the rights of persons with disabilities in using air services and facilities. This manual requires that all procedures forming part of an air travel journey should be adapted to the needs of persons with disabilities in order to facilitate the clearance and air transportation of such persons in a dignified manner. This includes the procedures of reservations, check-in, immigration and customs, security clearances, transfers within airports, embarkation and disembarkation, departure, carriage, and arrival. This manual thus further requires that there should be some sort of training to prepare the staff to assist with a professional service to persons with disabilities and in a manner that respects their dignity. The Manual also requires the aircraft and air operators, ground handling operators, and travel agents to take necessary measures to communicate and to inform the persons with disabilities all the information needed prior to their journey. This information could be in the form of guidance material relating to air travel by persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities, without any additional costs [17].

From the description above, it can be seen that the actual protection and fulfillment of the rights of persons with disabilities in international civil aviation have been regulated by ICAO as the institution responsible for international civil aviation.

CONCLUSION

The international instruments regarding civil aviation have regulated the protection and fulfillment of the rights of persons with disabilities in air transport. However, it must be noted that the two provisions under Chapter 8 in Annex 9 dedicated to persons with disabilities in civil aviation are only Recommended Practices and not Standards. Moreover, both instruments, Annex and the Manual are not legally binding on States, airports and airlines, thus these parties are not obligated to obey the provisions in both instruments.

Thus we recommend the ICAO to develop an official standard that has legal binding power and must be implemented by the ICAO member countries, along with airports and airlines all over the

world. This standard must be continuously updated so they can continue to provide protection and fulfillment of rights of persons with disabilities in international civil aviation. Furthermore, this standard should be supplemented by strict sanctions for the violators.

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