

Dialectical Consideration on the Relationship between Civil Aviation Safety and Passengers' Rights and Interests

-- On the Appropriateness of Civil Aviation Security Measures from the Perspective of Passenger Rights Protection

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Abstract. There is a tension and symbiosis between civil aviation safety and passengers' rights and interests, which are both competitive and interdependent. Civil aviation safety is the primary value of air transport. Civil aviation security measures are of great significance in eliminating or preventing the devaluation of safety value caused by illegal ACTS of passengers. To realize the "ecological balance" between the safety of civil aviation and the rights and interests of passengers, it is necessary to consider the implementation of aviation security measures from the perspective of passenger rights protection and investigate their appropriateness.

Key words: civil aviation safety; passengers' rights and interests; relationship; security measures; appropriateness.

1. Civil Aviation Safety and its Legislative Concepts

Civil air transport is one of the most important modes of transportation in the world today. The natural rapidity of civil air transport activities has laid an irreplaceable role and position in a country's transportation network system. At the same time, due to the high-tech and high-risk of civil aviation industry, security issues have been accompanied by civil aviation since its birth. Safety is the eternal theme of civil aviation industry. It plays a dominant and decisive role in the development and survival of civil aviation industry. It is the top priority of all civil aviation work and the lifeline of civil aviation development.

During the 13th Five-Year Plan period, there are unprecedented opportunities and challenges for the modernization of aviation safety management system and management capability. The state has put forward the requirements of strengthening aviation safety monitoring capability, technical equipment support capability and emergency response and disposal capability at the level of safety and strategy, fulfilling the responsibility of safety production, consolidating the safety foundation and building the safety defense line. The report of the Nineteenth National Congress pointed out that we should "set up the concept of security development, carry forward the idea of life first and safety first, and improve the public security system... Accelerate the construction of social security prevention and control system." In recent years, our country's leaders have made important instructions on civil aviation safety work: "Adhere to the bottom line of civil aviation safety, zero tolerance of potential safety hazards". In the new period and stage, the CPC Central Committee has put forward higher standards, higher requirements and higher trust for civil aviation safety.

Illegal and criminal acts that hinder the safety of civil aviation industry, which are derived from the rapid development of civil aviation industry, are bound to put forward higher requirements for the legalization of civil aviation safety management and governance. China's civil aviation legislation has been adhering to the principle of putting safety at the core and maintaining safety has always been the original intention and basic idea of legislation. Our country mainly around the aspects of flight safety, civil aviation safety and security, aviation safety inspection, airport operation safety and so on, has formulated the Civil Aviation Law, Civil Aviation Safety and Security Regulations, Civil Aviation Safety Inspection Rules, Civil Airport Operational Safety Management Regulations, and Rules for Safety and Security in Public Air Passenger Transport Flight, and other laws and regulations.

The above-mentioned laws and regulations take "safeguarding the safety of civil aviation activities" as the primary legislative concept in the general provisions.

2. Tension Exists between Civil Aviation Safety and Protection of Passengers' Rights and Interests

In civil aviation transport activities, when flight delays occur, or in passenger security checks, civil aviation passengers' legitimate rights and interests as consumers are more likely to be infringed, while airlines and airports tend to defend civil aviation security as a defense. So, does it mean that there is a conflict between civil aviation security and the protection of civil aviation passengers' rights and interests?

First of all, at the legal level, it seems to require the protection of civil aviation passengers' rights and interests to give way to civil aviation safety to some extent. As early as in 2004, the guiding opinions on economic compensation for flight delays pointed out that due to the airline's own reasons, flight delays should be properly compensated.

The Normal Flight Management Regulations, which came into effect on January 1, 2017, specifies that due to weather, unexpected events, air traffic control, security and passengers, non-carrier reasons, the departure of flights is delayed or cancelled at the place of departure, the carrier only assists passengers in arranging meals and accommodation, and the cost is borne by passengers themselves. Airlines can accordingly put forward that based on aviation safety considerations, flight conditions cannot be met, resulting in flight delays, which infringes the legitimate rights and interests of civil aviation passengers as consumers. In terms of civil aviation security inspection, the Civil Aviation Safety Inspection Rules clearly stipulate that passengers who are alerted through personal security inspection equipment should be reexamined by means of repeated personal security inspection equipment or manual personal inspection. And if there are still doubts, strict inspection will be carried out.

From the perspective of civil aviation legislation to practice, the conflict between civil aviation safety and protection of passengers' rights and interests seems to be real. In practice, for the logical relationship between civil aviation safety and the protection of passengers' rights and interests, most people feel that civil aviation safety belongs to the category of social interests. And because the proposition of "social public interests are higher than personal interests" has always been praised, passengers' rights and interests should naturally give way to civil aviation safety. That is to say, when social interests (civil aviation safety) and personal interests (passenger rights) conflict, we often choose to sacrifice personal interests, in order to protect social interests. In addition, most passengers will take into account that civil aviation safety also involves their own safety, and will basically acquiesce that civil aviation safety is higher than everything else, so that the rights and interests of passengers are also harmed.

However, if only blindly acknowledge and strengthen the conflict between civil aviation security and the protection of civil aviation passengers' rights and interests, it will make the solution of civil aviation disputes more intensified, and will also lead to excessive and even illegal acts of passengers. So, is there consistency and harmony between civil aviation security and passenger rights protection? From another point of view, civil aviation security and the protection of civil aviation passengers' rights and interests must involve the conflict between public interests and personal interests? These are debatable. The concept of public interest is abstract and general. It is called "the concept of uncertain law" in jurisprudence. For the personal interests of passengers, only in specific tort cases, the interests of civil aviation passengers are specifically determined. However, in order to ensure the safety of civil aviation, the rights and interests of civil aviation passengers are the interests of all civil aviation consumers, including potential civil aviation consumers. It seems that the rights and interests of civil aviation passengers at this time are no longer just personal interests.

3. Consistency between Civil Aviation Safety and Protection of Passengers' Rights and Interests

There is conflict between civil aviation security and passenger rights protection to a certain extent, but is this conflict necessarily irreconcilable? Is there consistency between the two? By carefully examining the legislative concepts of civil aviation safety and protection of passengers' rights and interests, we will find that the emphasis on the importance of "safety first" in civil aviation is not entirely antagonistic and conflicting with the protection of civil aviation passengers' rights and interests.

First of all, in the concept of civil aviation safety, human safety and aircraft safety are the most important point in civil aviation safety. In human safety and aircraft safety, the passenger safety includes non-infringement of passenger's right to life, health and property rights. Among them, the most basic right is the right to life, without the right to life, other aspects of the protection of passengers' rights and interests will be meaningless. Only when the safety of civil aviation is guaranteed, the life rights of civil aviation passengers can be guaranteed at the most basic level, and it is possible to realize the protection of other rights and interests of civil aviation passengers. Secondly, the legislative concepts of civil aviation safety and the protection of civil aviation passengers' rights and interests are also consistent. Both of them point to the protection of civil aviation passengers' rights and interests, and there is no conflict and opposition in the interests and value objectives, and there is a certain coincidence in their positions, purposes and starting points. Civil aviation security is the most basic and important one in protection of passengers' rights and interests. If we use civil aviation safety as an excuse and neglect or even sacrifice the legitimate rights and interests of passengers, it will go against the original intention of China's aviation safety legislation. On the contrary, it is wrong to ignore the safety of civil aviation transportation in order to protect passengers' rights and interests. Therefore, in order to ensure the safety of civil aviation, certain rights of civil aviation passengers need to be limited under certain circumstances, and this restriction is very necessary.

Thus, there is a tension and symbiotic relationship between civil aviation security and the protection of civil aviation passengers' rights and interests. They are interdependent and competitive. In the process of the development of civil aviation industry, we should find a reasonable balance between civil aviation safety and the protection of civil aviation passengers' rights and interests. In order to ensure the safety of civil aviation, some rights and interests of civil aviation passengers should be limited to a certain extent, and at the same time, the possible infringement of civil aviation passengers' rights and interests in the process of restriction should be prevented. This requires that when legislators formulate relevant laws and regulations concerning relevant systems and measures, they should not only give priority to civil aviation safety, but also take into account the protection of the rights and interests of civil aviation passengers, but also threaten civil aviation safety for their rights and interests. At the same time, it is necessary to study the legitimacy of aviation security measures from the perspective of protecting passengers' rights. At the implementation level, it is necessary for the implementer to be subject to the necessary legal constraints and to be able to control his actions within the scope permitted and required by law. On the basis of guaranteeing the safety of civil aviation, we should maximize the protection of passengers' rights and interests, and strictly regulate acts beyond the legal scope.

4. Appropriateness Judgment of Civil Aviation Security Measures from the Perspective of Passenger Rights Defense

Aviation security measures cannot ignore the legitimate rights and interests of passengers. Aviation security measures cannot go beyond the law to make illegal security measures or unreasonable and inappropriate security measures. Measures should be taken to ensure that they are in line with the scenario of passenger behavior, that they are implemented under the principle of

excessive penalties, and that the legitimate rights and interests of passengers should be safeguarded as far as possible.

4.1 The Security Measures Taken are Lawful and Necessary

Extrajudicial punishment violates the principle of the rule of law, and any security measures must be carried out within the limits of the law. The necessity of civil aviation security measures requires a comprehensive analysis of whether there are unsafe factors in the way passengers take to safeguard their rights. Corresponding measures should be taken according to the degree of unsafe factors. Violent civil aviation security measures should not be taken in the act of safeguarding their rights, and corresponding security measures should be adopted in the slight unsafe factors. For example, when passengers have disputes with crew members over toilet use and security personnel break their ribs, it clearly goes beyond the boundaries of excessive punishment. What's more, whether their actions are "excessive" or "punishable" still needs to be judged by law enforcement and judicial departments. The use of violence by security personnel before they are punished without trial or evidence obtained by law enforcement personnel is not a security purpose, nor should they be in a state of law and order.

4.2 The Security Measures Taken Shall be in Conformity with the Security Objectives

The purpose of civil aviation security measures can only be for the safety of civil aviation, and tort or retaliation cannot be carried out in the name of safety. At the same time, the implementation results of security measures should be consistent with the objectives to be achieved. If security measures do not increase aviation safety, nor can they reduce aviation safety threats or potential threats, or may even lead to the emergence of new aviation safety threats, the implementation results of security measures are not consistent with the objectives to be achieved. For example, passengers complained about delays on the plane, and crew members rushed them off because it was not conducive to flight safety. This was obviously not a security measure implemented for safety purposes, but because the "disgust rule" of the crew was the dominant security measure for the passenger.

4.3 Security Measures should be Determined According to Different Types of Incidents

Different types of incidents, different places, security procedures and the degree of rigor should be different. The damage consequences of the same act may vary from place to place. For example, airport control area and airport non-control area, the former is not allowed to enter without permission and strict inspection, while the latter is relatively relaxed. This is because the control area is more likely to interfere with and threaten aviation safety. For example, in case of disputes between passengers and crew members, in order to ensure the safety of the crew and other passengers, certain security measures can be taken according to regulations, and even passengers can be driven off the plane. If passengers are noisy at airports because of safeguarding their rights, security measures should be less stringent and they should not be refused boarding. The restrictions imposed on passengers by security measures at different locations should be determined according to their safety objectives and should not be expanded indefinitely. Similarly, the legitimate act of safeguarding passengers' rights should not be regarded as a dangerous act and strong security measures should be taken.

4.4 The Negative Impact of Security Measures on Passengers should be Minimized

Security measures should be taken to minimize the impact on the passengers and other passengers concerned. Security should not be used as an excuse to take coercive measures against violent crimes against passengers without security threats, so as to expand the loss of passengers indefinitely. When taking security measures, the legitimate rights and interests of passengers should be taken into account, and passengers' demands should not be regarded as unsafe factors. Reasonable appeals should be actively supported, and unreasonable appeals should not adopt compulsory security measures if they can be solved by other means. When passengers' demands cannot be solved and passengers have

threatened the safety of civil aviation, compulsory security measures should not be used if minor security measures can be taken.

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