

Protection of Passengers' Rights and Interests in the Event of Flight Delays

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Abstract: *The protection of passengers' rights and interests in the event of flight delays is not only related to the interests of passengers themselves, but also hinders the overall development of the civil aviation industry. In current practice, the rights and interests of passengers who suffer from delays cannot be effectively protected. To this end, the legislature shall clarify the criteria for judging delays, formulate the guidance on economic compensation issued by the General Administration of Civil Aviation as a legal document with enforceable force, and the competent civil aviation authorities shall establish a platform for publicizing the reasons for flight delays. In addition, the establishment of a people's mediation committee for flight delay disputes can effectively reduce the time and economic cost of passenger claims.*

Keywords: *Flight Delays, Airlines, Rights and Interests of Passengers*

1. Introduction

Nowadays, airplane has become an important means of transportation for people to travel, especially when they travel long distances, it is the first choice of people. However, China's domestic flight delays have always been criticized by passengers. According to the annual statistical report of the Civil Aviation Administration of China, in recent years, the passenger complaints account for the highest proportion in China's domestic air transport, and passengers' complaints about flight delays account for about 45% of the total number of complaints. Therefore, the flight delay problem is worthy of attention, the main problem lies in the legal judgment standard of flight delay and flight delay damage compensation.

2. The importance of protecting passengers' rights in the event of flight delays

Throughout the trend of aviation law legislation around the world, the focus of legislation is more and more biased to the protection of passengers. Passengers are in a relatively weak position compared with airlines, especially when the flight is delayed, the rights and interests of passengers are not only infringed but also in a state of isolation. Protecting the rights and interests of passengers in the delayed situation is the result of the legislative trend to protect the weak, is the main form of legal pursuit of social fairness and justice, and is the inevitable requirement for the safety and orderly progress of air transport. In addition, passengers often suffer economic damage when the flight is delayed, and complain or claim to the staff of the airport and the airline. But when complaints or claims cannot be resolved in a timely manner, it can cause dissatisfaction among passengers. Some passengers beat the ground service personnel in the airport, destroy the airport channel rush into the tarmac to prevent other flights from taking off and landing, and some will still vent their emotions after boarding the plane, disrupt the normal order of the cabin, causing chaos, which will greatly interfere with the pilot's flight, resulting in security risks. For example, at Chengdu Shuangliu Airport in 2010, two passengers verbally assaulted an employee over a delayed flight and pushed him from the second floor, leaving him seriously injured. For another example, when a passenger was delayed by flight SC4672, the marshals insulted and beat the air traffic attendant, causing serious injuries to the attendant. Even if passengers do not behave aggressively, they may choose other means of transportation because of dissatisfaction with airline service. This situation is very unfavorable to the overall development of the civil aviation industry. Therefore, it is very necessary to strengthen the protection of delayed passengers. Protecting the legitimate rights and interests of passengers in the case of delays can not only improve passengers' satisfaction with airline services, but also promote the sustainable, healthy and orderly development of the civil aviation industry.

3. Reasons why Passengers' rights and Interests Cannot be Effectively Protected During Delays

The China's Civil Aviation Law, as the basic law to regulate China's civil aviation activities, does not define "flight delay". However, "Regulations on the Normal Management of Flights", define flight delay in Article 3: Flight delay refers to the situation where the actual arrival of a flight and the time it takes to block the wheels is delayed by more than 15 minutes compared to the planned arrival time. Although the "Regulations on the Normal Management of Flights" define what is "flight delay", the main purpose of this regulation is to facilitate administrative statistics and management to implement the administrative responsibility of airlines rather than civil liability. The Civil Aviation Administration of China's administrative penalties such as imposing administrative fines or cancelling route management rights on airlines with severe flight delays cannot directly affect the protection of passenger rights. Flight delay disputes belong to civil disputes, and when a judge handles civil disputes, the law should first apply. If there are no provisions in the law, customs should be applied. The term "law" in the source of Chinese civil law only refers to basic laws. This means that other traditional sources of civil law, including administrative regulations, local regulations, and departmental rules, are excluded from the civil law sources specified in Article 10 of the Civil Code. From the perspective of effectiveness level, the "Regulations on the Management of Regular Flights", as a departmental regulation, have a lower level and cannot directly become the source of civil law. But there are also exceptions, that is, if the lower law is authorized by the upper law, there is still a possibility that the lower law can become the source of civil law. However, currently the Legislative Law does not authorize departmental regulations to regulate civil systems, and current civil laws do not provide for regulations to become the source of civil law. Therefore, the "Regulations on the Normal Management of Flights" cannot become a source of civil law through authorization. So in civil disputes, it is not possible to directly determine whether a flight is delayed based on the definition of "flight delay" in the "Regulations on the Management of Regular Flights". This has caused the problem of unclear criteria for determining flight delays.

The judgment standard of flight delay is fuzzy. Passengers and airlines have very different ideas about what "flight delay" means. In the mind of passengers, "flight delay" refers to "flight delay". They believe that since the airline company has published the flight schedule on its official website, ticket office and other places, and the departure time and arrival time are clearly indicated in the ticket, the airline company should carry out transportation according to this time. If the aircraft does not leave the station or arrive at the station according to the above time, it is in violation of the "agreed time" stipulated in the first half paragraph of Article 811 of the Civil Code [Article 811 of the Civil Code: The carrier shall safely transport the passengers and goods to the agreed place within the agreed period or within a reasonable period.] Which constitutes a flight delay. The airline does not agree with the theory of the agreed time held by the passenger, but maintains that the air transport is not delayed as long as it meets the "reasonable period" set out in the second half of Article 811 of the Civil Code. Because the general conditions of carriage of airlines have clearly stipulated that the flight schedule and the flight time specified in the ticket do not constitute an integral part of the carriage contract. The airlines' view is called a "flight time non-contract clause." In addition, the so-called "general conditions of transport" is actually a form of contract, will be published on the official website of the airlines, but also in the Civil Aviation Administration for the record, passengers successfully buy tickets at the same time is also the acceptance of the form of the contract. It should be noted that form contracts are not necessarily valid and need to meet the requirements of Article 497 of the Civil Code. The "flight time non-contract clause" is valid as a format clause because it does not exempt the airline from compensation for delays, nor does it exclude the passenger's primary right, which is to demand that the airline safely transport him or her to the agreed place.

Article 111 of China's Civil Aviation Law expressly stipulates that a passenger ticket is prima facie evidence of the conclusion of a passenger transport contract and the conditions of a transport contract. This clause means that the passenger ticket has two functions. The first function is to prove the conclusion and existence of the air passenger carriage contract between the passenger and the air carrier. The second function is to prove that the passenger agrees and accepts the general conditions of carriage of the airline into the air carriage contract. In the case of flight delay, the ticket proves that the passenger has signed an air transport contract with the airline, and the contract stipulates that the flight schedule and the flight time specified on the ticket cannot form an integral part of the contract. General conditions of air transport and Article 111 of Civil Aviation Law give sufficient reasons for airlines to deny the theory of appointment time.

Even when passengers and airlines ultimately agree that a flight constitutes a "delay," there is often a greater disagreement over compensation for the delay. Passengers generally believe that the air transport contract between them and the airline company should be adjusted by the Civil Code, flight delay is the

delayed performance of the air transport contract, and the carrier's liability for breach of contract should be investigated according to the provisions of the Civil Code for delayed performance. However, this view of the passengers is not supported by the law. For article 131 of the Civil Aviation Law provides that an action relating to loss incurred in air transport, regardless of its basis, can be brought only under the conditions and limits of liability laid down in this Law. This clause is the exclusive application clause, that is, the Civil Aviation Law in the aspect of passenger transport exclusively governs the passenger action for loss caused by accidents and delays in air transport. [1](P93) This clause means that in case of flight delay, passengers can only claim compensation from the airline under Article 126 of the Civil Aviation Law rather than the relevant liability provisions of the Civil Code.

Article 126 of the Civil Aviation Law stipulates that the carrier shall bear the loss caused by the delay of the passenger in the air transport. However, the carrier shall not be liable if it proves that he or his servant or agent has taken all necessary measures or is unable to take such measures in order to avoid the occurrence of loss. This law has two meanings. The first meaning is that the air carrier is only liable for the economic loss caused by the flight delay, excluding other liability bearing methods such as apology. But passengers often demand an apology from airlines for delayed flights, and in recent years there have been cases of passengers asking airline staff to kneel in apology. The second implication is that the carrier is only liable for "loss caused by delay" and is not liable for the fact of "delay". In other words, even if the flight taken by the passenger is delayed for a long time, if no actual economic loss is caused to the passenger, the carrier is not required to compensate, and the passenger cannot claim compensation from the carrier only because of the delay. To receive compensation for the delay, passengers must prove they have suffered actual financial loss as a result of the delay. The problem, however, is that the majority of travelers who choose to fly simply want to get to their destination as quickly as possible for meetings, sightseeing or rest at home. These travelers suffer "lost time" rather than financial loss and cannot be compensated.

In addition, it can be seen from the provisions in the second half of this clause that the airline assumes presumptive liability for the damages caused by flight delay. This means that if the airline can prove that it has done everything in its power to avoid passenger loss caused by the flight delay or that such loss is caused by force majeure, then the airline is not at fault and is not liable for compensation. In practice, flight delays caused by bad weather, air traffic control, airport flow control and other reasons are not the fault of airlines. Therefore, airlines often use the above reasons as an excuse to refuse to compensate passengers, and passengers cannot know the real reason for the flight delay, thus losing the opportunity to obtain compensation for the delay.

4. Measures to Protect the Rights and Interests of Passengers in Case of Delay Clarify the criteria for determining "delay"

The appointed time theory advocated by passengers can effectively simplify the judgment of "delay". However, it is worth noting that under the current civil aviation technology conditions, if the appointed time theory advocated by passengers is adopted, it should be said that it is impractical. The time specified in the flight schedule is accurate to the minute. It is impossible to require carriers to arrive at their destinations at the exact time of day according to the flight schedule. As a result, airlines will face great pressure for compensation for delays. This is unfair to airlines, and it will also discourage them from operating and service to passengers. In addition, aircraft control is a high-risk activity. If the airline company is forced to comply with the delay compensation pressure to arrive at the time specified in the flight schedule, it will require the pilot to increase the flight speed, which is a hidden danger for the safety of passengers. If the flight speed is not increased to ensure the safety, the airline is likely to cancel some flight tasks and widen the flight interval to reduce the risk of delay, which will also affect the travel of passengers and go against the original intention of protecting the rights and interests of delayed passengers. In addition, if the agreed time theory is adopted, Article 111 of the Civil Aviation Law must be amended, and each airline company is required to explicitly delete the content contrary to the agreed time theory in the general conditions of transport. Such practice is in conflict with mainstream views in the international air transport industry. The passenger ticket evidence clause of the 1999 Montreal Convention regulating international air transport is no different from the current Article 111 of China's Civil Aviation Law. In addition, the General Conditions for the Transport of Passengers and Luggage formulated by the International Air Transport Association and the vast majority of the world's major airlines stipulate that the flight schedule or the time specified in the ticket do not constitute an integral part of the contract. IATA strongly advocates that the carrier's obligation is to make every effort to transport passengers and luggage reasonably and promptly, rather than strictly following the timetable for transportation. If the relevant provisions are amended, there will be a conflict with the mainstream

international practice, which is not conducive to the connection between China's domestic air transport and international air transport. If the reasonable period theory advocated by the airline company is adopted, it is more feasible and conforms to the provisions of the law, and there is no need to modify the law based on passengers' opinions.

However, this would involve the judgment of the "reasonable period". At present, Chinese laws and regulations also do not stipulate the "reasonable period", but leave the work to the discretion of judges. However, most judges are not familiar with air transport, which is a highly professional mode of transport. Therefore, the legislature should clarify the standard of "reasonable period" of air transport in the Civil Aviation Law for judges to judge. The "reasonable period" of air transport can not only consider the time factor, but should learn from the advanced practice of EU Regulation 261/2004, which combines the time factor with the distance factor for comprehensive consideration. Passengers and airlines will also be able to refer to the normative legal document to determine whether a flight is delayed beyond a "reasonable period". The "delay" criterion can solve the dispute between passengers and airlines on whether the flight constitutes "delay" to a large extent.

5. Pass laws to clarify what passengers "lose" when their flights are delayed

The current legislation is not sufficient and perfect to protect the rights and interests of passengers in the case of delay. As mentioned above, it is difficult for passengers to get compensation for delays. In this regard, the EU's judicial practice on the protection of passengers' rights and interests in the case of delay is worthy of attention. In the judicial practice of the Court of Justice of the European Union, passengers who suffer a long delay can get compensation for their "loss of time" from the airline company, unless the long delay is caused by force majeure factors. The essential difference between the judicial practice of the Court of Justice of the European Union and the delay compensation provisions of China's Aviation Law is that the former does not require the passenger to prove that he has suffered actual economic loss due to the delay. In fact, the guideline issued by the Civil Aviation Administration of China also has similar provisions, but because the document is only a policy document, there is no enforcement power, unable to restrain airlines. [2] In practice, only a few airlines, such as Shenzhen Airlines, have incorporated the terms of this document into the general conditions of transport.

The lack of enforcement power for this document is a concern of the legislative body with the following three factors: 1) Compensation for non property damages such as "time loss" lacks a legal basis. 2) Modern civil aviation technology is not yet sufficient to ensure a high punctuality rate in air transportation. The punctuality rate of air transportation is easily affected by various factors, and compensating for non property losses will bring significant compensation pressure to the carrier. 3) The degree of non property damage is not easy to define, and compensating for such damage will not only bring about a large number of lawsuits but also the hidden danger of judges abusing their discretion.

In fact, by referring to the relevant provisions of EU Regulation 261/2004 and modifying the document, there is no need to worry about the above three issues. Firstly, Article 3 of the current Chinese Civil Code clearly stipulates that the law protects the personal rights and other legitimate rights and interests of civil subjects, and time interests can clearly be included in the scope of protection. Due to Article 990 of the Law clearly defining the concept of general personality rights in Chinese law for the first time, Chinese courts can also classify "time loss" as an infringement of general personality rights, and in combination with relevant provisions of the Tort Law of the Law, compensate the plaintiff. From the perspective of comparative law, German courts classify the object of non property damage as a general personality right and apply the provisions of Article 847 of the German Civil Code to award relief money to the plaintiff. Secondly, the provisions of EU Regulation 261/2004 and court precedents can be used for reference. The carrier is not required to compensate passengers for "time loss" caused by flight delays caused by special events. In addition, considering that the punctuality rate of flights is indeed susceptible to various factors, the carrier should be given the right to recover from others. If the flight delay is caused by reasons such as air traffic control or airport, the carrier can recover from the true responsible person after compensating the passenger for the "time loss". Therefore, the carrier ultimately only bears the passenger's "time loss" caused by its own fault. Thirdly, EU Regulation No. 261/2004 strictly links the amount of compensation that passengers can receive for "time loss" to the voyage and time, in order to clarify the degree of loss and limit the discretion of judges. Therefore, legislative activities should be carried out to transform the guidance into legal documents with legal binding effect, so as to compulsorily constrain the airlines, so as to protect the rights and interests of passengers in the case of delay.

6. Provide assistance services for passengers experiencing flight delays

Compensating passengers for delays is only one aspect of the protection of passengers' rights and interests. Due to the contractual relationship between passengers and airlines, airlines also need to care for delayed passengers according to the duty of diligence in contract law theory, such as providing basic meals and necessary accommodation services for delayed passengers. In this point, the general conditions of carriage of most Chinese airlines only stipulate that the flight delay is caused by the carrier, and the carrier is responsible for providing accommodation services, which is obviously not conducive to protecting the interests of passengers in the case of flight delay not caused by the carrier.

From a legal perspective, this is the intention of airlines to evade reasonable incidental obligations arising from air transport contracts through contractual agreements. Even if the flight delay is not caused by the airline, a reasonable accompanying obligation requires the airline to provide assistance services such as catering and accommodation for passengers. It is necessary to explain what is a reasonable collateral obligation, and whether the collateral obligation is reasonable needs to be considered from the perspectives of both the right holder and the obligation holder, and then comprehensively consider the characteristics of the three collateral obligations.

Firstly, compliance with Purpose: Reasonable collateral obligations should be conducive to achieving the purpose of the contract. The purpose of air transportation contracts is to enable passengers to conveniently and quickly carry out displacement activities and reach their final destination. Providing care and assistance undoubtedly facilitates passengers, eliminating the need for them to worry about food, accommodation, communication, and transportation issues as they have experienced delays in the past. After being properly arranged, most passengers do not choose to refund or change their itinerary, which is conducive to achieving the purpose of the contract and the final performance of the contract. Secondly, Balance of interests: Reasonable collateral obligations are necessary to meet the urgent needs of the rights holder, while not imposing a serious burden on the obligor, and cannot include unforeseeable factors. Airports are mostly located in suburban areas of cities with inadequate supporting facilities. If passengers experience prolonged delays, they are likely to be in a state of hunger and no place to rest. Carrier accommodation services can meet the urgent needs of passengers, and because carriers usually reach cooperation agreements with airline food departments, hotels, and bus rental companies to provide passengers with the necessary accommodation and transportation services at a lower cost, Moreover, most carriers will provide free air meals on their flights. If the delay falls within the flight meal delivery period, for the carrier, it is simply a matter of changing the air meal to a different location for distribution. Therefore, providing accommodation and other services will not greatly burden the carrier. Special events such as bad weather and strikes can be foreseen in advance through modern information media and technology, and do not include unforeseeable factors. Thirdly, moderation: The accompanying obligations undertaken by the carrier should not exceed its affordability. This obligation only requires regular meals and accommodation standards, and only requires a quantity that matches the waiting time, which does not exceed the affordability of airlines with huge financial support. It can be seen that the provision of assistance obligations in the case of flight delays by Chinese carriers is clearly not in line with the reasonable standard of accompanying obligations, and is too biased towards protecting the interests of the carrier while neglecting the interests of passengers.

If these two problems can be effectively solved to make up for the loss of passengers and make them feel the intimate care of airlines, then the rights and interests of passengers will be protected naturally. Since the rights and interests of passengers are protected, they will not take drastic actions to protect their rights. In this way, not only the rights and interests of passengers are protected, but also conducive to the stability of air transport order.

7. Strengthen the administrative management of civil aviation authorities

Firstly, the civil aviation authority should publish the reasons for flight delays, not the airlines. As a commercial subject, the guiding ideology of airlines is "egoism". In the case of flight delay, airlines will attribute the delay to weather, air traffic control and other reasons in most of the time, thus making themselves in a position of immunity. Such irresponsible behavior of airlines is a great violation of passengers' right to know and will directly affect the success or failure of passengers' claims against airlines. Therefore, it is necessary to establish a flight delay information publicity platform led by the civil aviation authority, based on the airline company's report on the cause of flight delay, by the civil aviation authority to check the report made by the airline company, the verification after the public, passengers can land on the platform to inquire about the cause of flight delay. Adopting this method can

effectively prevent airlines from arbitrarily modifying the causes of flight delay to avoid damages to the rights and interests of passengers.

Secondly, the civil aviation authority should establish a passenger blacklist system. Protecting the rights and interests of delayed passengers cannot only control the behavior of airlines, but also requires controlling the behavior of passengers. In 2018, China Southern Airlines flight took off from Chengdu and arrived in Beijing. Due to the sudden rainstorm, the flight arrived in Beijing 3 hours late. After arriving at Beijing Capital Airport, a passenger blocked the door of the aircraft for up to 4 hours to prevent other passengers from getting on and off the aircraft and asked the airline to compensate him 1000 yuan. This passenger's bad behavior not only seriously infringed on the rights and interests of other passengers on the flight, but also affected the subsequent flight tasks of the flight, causing delays for passengers on subsequent flight segments. Therefore, the civil aviation regulatory authorities should establish a passenger blacklist system to refuse to transport similar passengers in order to protect the rights and interests of other passengers.

8. A people's mediation committee for flight delay disputes will be established

At present, the resolution path of civil disputes over flight delay in China is generally the same as that of other civil disputes, that is, both parties shall negotiate first, and if the negotiation fails, they shall be settled by court judgment. In addition to the difficulty in determining flight delay, the characteristic of flight delay disputes is that the amount of compensation passengers claim is often not large. If settled through civil litigation, it could take months and be costly. In addition, according to Article 27 of the Civil Procedure Law of China, the court of jurisdiction for civil disputes over flight delay shall be the court of the place of origin, destination and domicile of the airline company. However, in daily life, the above three courts may not overlap with the courts of the frequent residence of passengers, which is not convenient for passengers to sue. Therefore, the author thinks that we can learn from the ideas of EU countries to set up a delay dispute settlement agency to alleviate the current problems faced by passengers' claims for delayed flights. It is worth noting that this agency should not be an administrative agency, because the essence of the flight delay dispute is a civil dispute between passengers and airlines, if the administrative function of the civil aviation authority is involved, then the dispute is likely to turn into an administrative lawsuit. Currently, in countries such as Finland and Hungary, consumer protection agencies resolve such issues and exercise adjudication. The Netherlands still uses the legal route but has a small claims court, where passengers only have to submit a form rather than hire a lawyer to represent them. [3](P122-124) The above practices are not suitable for China. China Consumer Association is not authorized by law to adjudicate disputes. Although there are small litigation procedures in China, they still need to be restricted by the rules of jurisdiction, which cannot fundamentally solve the problem of passengers' inconvenience in litigation. In contrast, the people's mediation system, known as the "Eastern experience", can be applied to disputes over flight delays. At present, industrial mediation committees are developing rapidly all over the country, such as doctor-patient mediation committee, property mediation committee and so on. The nature of industrial mediation committee is a mass autonomous organization. Based on their professional advantages, they can quickly reach a mediation agreement between the parties and obtain the same enforcement power as the judgment through judicial confirmation, thus reducing the litigation cost and dispute resolution cycle. [4] After the establishment of a flight delay dispute mediation committee, passengers can effectively safeguard their rights and interests by relying on its high professionalism, low cost nature and short dispute resolution period.

9. Conclusion

In the field of the legal system for flight delays, existing legislation first protects the interests of airlines and then appropriately takes into account the interests of passengers. However, in improving China's legal system for flight delays, it is necessary to amend the legislation that currently primarily protects and supports carriers in the Civil Aviation Law. Any legislation needs to be in line with the background of the times. The establishment of the legal system for flight delays in China was around the 1990s, when the Chinese civil aviation industry was in the pre rapid development stage and needed protection from laws and policies. It is reasonable for the balance of law to tilt towards carriers, which can effectively protect the fledgling civil aviation industry. Now, after nearly 20 years of rapid development, China's civil aviation industry is no longer a small industry. It has completed capital accumulation, and its civil aviation technology has also been greatly improved, no longer requiring the bias of laws and policies. Compared to both airlines and passengers, passengers are clearly in a

disadvantaged position when flights are delayed. Protecting the weak is the main theme of modern legislation, and the theory of substantive fairness is supported. It is correct to regard further protecting the interests of passengers as the purpose of improving the legal system for flight delays, in order to achieve a basic balance between the interests of the two. However, it should also be noted that the interests of passengers cannot be overly protected while neglecting the interests of airlines.

Whether it can effectively protect the rights and interests of passengers in case of delay while taking into account the interests of airlines, not only concerns the interests of passengers themselves, but also concerns the development of the whole civil aviation industry. The legislature, civil aviation authorities and airlines should take concrete actions to protect the rights and interests of passengers in the case of flight delays. Meanwhile, the People's Mediation Committee on flight delays and omissions should be established as an industrial mediation committee as soon as possible. Only in this way can we improve passengers' satisfaction with air transport and ultimately promote the overall development of China's civil aviation industry.

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