



JUST CULTURE: QUO VADIS ?

RODERICK VAN DAM
CHAIRMAN EUROCONTROL JUST CULTURE TASK FORCE

Lisbon 22-23 2016

JUST CULTURE CORE

OCCURRENCE REPORTING

INCIDENTS

PROTECTING THE REPORTER



BALANCING

Two equal goals:

Enhancing Safety and Administration of Justice

No extremes:

No immunities from Prosecution

No misuse of Prosecution/Judicial Powers

Resolve at the roots:

Protect reporting/investigation process

Establish prosecution policy

Support Judiciary and mutual Education

Just Culture Concept (by any name)

DEFINITION

A Culture where front-line operators or other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which gross negligence, wilful violations and destructive acts are not tolerated.





“Honest
Mistake”

Unacceptable
Behaviour

WHO MAKES THE CALL?

ONLY A **NATIONAL PROSECUTOR** CAN MAKE THAT CALL AND INVESTIGATE THE FACTS AND CIRCUMSTANCES IN ACCORDANCE WITH APPLICABLE CRIMINAL LAW.

“GROSS NEGLIGENCE” : SERIOUS DISREGARD TO AN OBVIOUS RISK AND PROFOUND FAILURE TO TAKE SUCH CARE THAT IS EVIDENTLY REQUIRED IN THE CIRCUMSTANCES. BROADLY RECOGNISED AS POTENTIAL CRIMINAL BEHAVIOUR.
(CRIMINAL INTENT)



TWO DOMAINS

SAFETY

INTERNATIONAL

SUPRANATIONAL
RULES

DYNAMIC

SAFETY FIRST

JUDICIARY

SOVEREIGN

NATIONAL LAW

STATIC

THE RULE OF LAW



JC AND THE REST OF THE WORLD

ICAO

ANNEX 13 Accident/Incident Investigation

ANNEX 19 Safety Management Systems

EU/EC

Performance regulation (691)

Accident/Incident Investigation regulation (996)

Occurrence Reporting regulation (376)

JCTF & DELIVERABLES

Proliferation of Just Culture in Europe, ICAO and global regions

Model for a National Aviation Prosecution Policy

Dedicated Prosecutor Expert Course

Just Culture at Corporate level

Just Culture Repository and Knowledge Center



MODEL AVIATION PROSECUTION POLICY

Coordination between safety investigators and judiciary authorities

Recognises the need to protect accidents and incidents reports; not to be used by a prosecutor as evidence

Criminal prosecution limited to cases of “gross negligence” and “wilful misconduct”

No prosecution for actions, omissions or decisions of a reasonable person, even in the case of an unpremeditated or inadvertent infringement of the law



PROSECUTOR EXPERT COURSE

EUROCONTROL/IFATCA initiative

Train & Educate Aviation Experts for Prosecutors;

Dedicated Experts - exclusively available on request;

A dialogue between Safety and National Judiciary;

Over 6 Courses held – **Next Steps**

DELTA CASE

Incident

Runway incursion: An aircraft cleared for take-off and another Tow Aircraft crossing same runway – Incident was avoided thanks to pilot – No damage

Consequences

- Criminal proceedings against a trainee-controller, his supervisor and another employee of Dutch ATC
- On appeal, the two defendants were found guilty as charged – no sentence imposed.

TURKISH AIRLINES CRASH SCHIPHOL



REALITY CHECK

Most States have established a **priority** for the Judiciary (Police and Prosecutorial Officials) in the investigation of accidents and incidents;

Many States have **prevented** use by their Judiciary of the evidence the investigator has collected and collated;

Almost all Safety Data Protection Rules make an exception for the Administration of Justice as a sovereign function



ISSUES

THE MYTH OF TOTAL PROTECTION

“GROSS NEGLIGENCE” AND “WILFUL MISCONDUCT”

PROSECUTOR DISCRETIONARY POWERS

EU COMPETENCIES & AMBITIONS

JUST CULTURE AT JUDICIARY AND CORPORATE LEVEL

COMMUNICATION-COMMUNICATION-COMMUNICATION!