

JUST CULTURE IN AVIATION

DYNAMICS & DELIVERABLES

RODERICK VAN DAM
CHAIRMAN
EUROCONTROL JUST CULTURE TASK FORCE

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PROTECTION OF SAFETY REPORTS

Balance between two goals:

- Enhancing Safety and Administration of Justice
- **No Extremes:**
 - No immunities from Prosecution
 - No misuse of Prosecution/Judicial Powers
- **Resolve at the root:**
 - Protect reporting/investigation process
 - Establish prosecution policy
 - Support and Educate Judiciary
- **Just Culture Concept (By any name)**
- **National and Internal Just Culture (?)**

WHO WANTS ACCESS?

AVIATION SAFETY AUTHORITIES:

- Accident & Incident Investigators
- Regulators

JUDICIAL AUTHORITIES:

- Administration of Justice, Retribution

CORPORATE MANAGEMENT (Airline or ATC Provider):

- Use of internal reporting for SMS purposes
- Other

PUBLIC AND MEDIA:

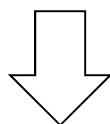
- Freedom of Information; Freedom of the Press

BALANCING PUBLIC INTERESTS

Aviation Safety

Incident reporting

Accident & Incident
Investigation



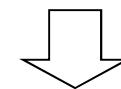
Safety and
Protection



Justice & Public
information

Prosecution of
criminal offences

Freedom of
Information and
Press



Punishment &
Disclosure

Just Culture

- Addresses Safety and Accountability
- Triggered by perceived “Criminalisation” of aviation accidents/incidents and its effects on safety reporting
- Evolved from “confrontational” concepts such as punitive-free reporting, blame free reporting
- Main Objective: To safeguard and increase incident reporting levels, not to justify absence of reporting
- Main Deliverable: To balance the responsibilities of aviation safety with those of the national criminal judiciary

REALITY CHECK

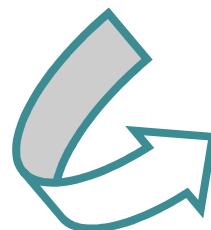
Most States have established in their applicable legislation a priority for the Judiciary (Police and Prosecutorial Officials) in the investigation of accidents and incidents;

Most States have legislation that prevents use by their Judiciary of the evidence the investigator has collected and collated;

Almost all national or international Safety Data Protection Rules make an exception for the Administration of Justice as a protected sovereign function.

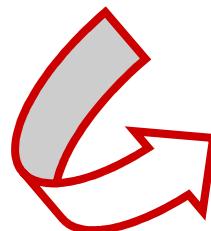
JUST CULTURE – MAIN ELEMENTS

Actions, omissions and decisions expected from someone with your level of training and experience



Not prosecuted

Gross Negligence or Wilful Misconduct



Not tolerated

BUT WHO DRAWS THE LINE ?

WHO DRAWS THE LINE?

WHO MAKES THE ASSESSMENT WHETHER AN ACTION
MUST BE SUBJECT OF CRIMINAL ADJUDICATION?

***GROSS NEGLIGENCE IMPLIES A DEGREE OF SEVERITY,
SERIOUS DISREGARD TO AN OBVIOUS RISK AND
PROFOUND FAILURE TO TAKE SUCH CARE THAT IS
EVIDENTLY REQUIRED IN THE CIRCUMSTANCES***

***"RENDER UNTO CAESAR THE THINGS THAT ARE
CAESAR'S"...***

IT MUST BE LEFT TO A NATIONAL PROSECUTOR OR
COURT TO ADDRESS AND ADJUDICATE SUCH
BEHAVIOUR IN ACCORDANCE WITH NATIONAL CRIMINAL
LAW

JUST CULTURE TASK FORCE

DELIVERABLES

- ✓ Coordination Just Culture and related activities:
 - Europe and ICAO with EU, EASA, ECAC
 - In ICAO and global regions
- ✓ Model for a National Aviation Prosecution Policy
 - To be implemented at pan- European State level
- ✓ Support to the Judiciary:
 - Dedicated prosecutor formation
 - Ongoing dialogue between aviation and judiciary
- ✓ Harmonised Corporate Just Culture
- ✓ JUST CULTURE CHARTER

Model for a National 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
- 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
- National implementation based on a unilateral decision by the State concerned, in particular the national judiciary authorities

PROSECUTOR SUPPORT COURSE

An IFATCA/ECA/EUROCONTROL initiative

- Train & educate aviation experts to assist Prosecutors; (ultimately) Criminal Courts;
- Dedicated Experts - Exclusively available on request with the sole purpose of providing them with technical and operational expertise on facts and their relevance;
- Expanding dialogue between Aviation and Judiciary that resulting in further communication and mutual education.

THE MYTH OF TOTAL PROTECTION

ICAO Legislation:

- ANNEX 13 Standards and advisory material (Attachment E)
- ANNEX 19 Idem (Appendix B)

EU Legislation

- Performance regulation 691/2010
- Accident/Incident regulation 996/2010
- Occurrence Reporting Regulation 376/2014
 - Just Culture
 - Definition of “Gross Negligence” at Corporate level
 - EU Competences and Administration of Justice

ISSUES

- **“CRIMINALISATION OF AVIATION” TREND**
- **“WILFUL MISCONDUCT” AND “GROSS NEGLIGENCE”**
- **PROSECUTOR DISCRETIONARY POWERS**
- **EU COMPETENCIES & AMBITIONS**
- **JC AT JUSTICE AND CORPORATE LEVEL**
- **COMMUNICATION, COMMUNICATION, AND COMMUNICATION!**