

JUST CULTURE IN AVIATION DYNAMICS & DELIVERABLES

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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:

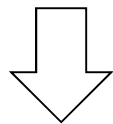
- Freedom of Information; Freedom of the Press

BALANCING PUBLIC INTERESTS

Aviation Safety

Incident reporting

Accident & Incident Investigation



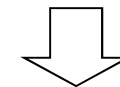
Safety and Protection



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

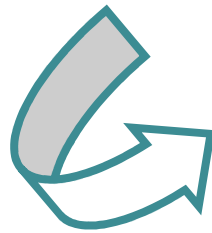
Most States have established in their applicable legislation a priority for the Judiciary (Police and Prosecutorial Officials) in the investigation of accidents and incidents;

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.

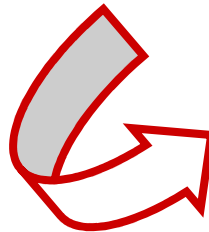
JUST CULTURE – MAIN ELEMENTS

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!**