

Just Culture: Problem statement

1 INTRODUCTION

Aviation safety is the top priority for all stakeholders. The improvement of safety in operations relies to a significant extent on a good safety culture, and the single most important part of a good safety culture has been recognised as Just Culture.

'Just Culture' as defined in Article 2 of Regulation (EU) No 376/2014 means a culture in which 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.

This ICB problem statement presents an overview of the regulatory context, previous work completed in the ICB on Just Culture, and how Just Culture has since evolved. It provides a baseline for the ICB to debate whether further needs to be done to fully implement Just Culture, and what advice should be developed for the Commission.

2 ICAO

At an ICAO level, Annex 13 (Aircraft Accident and Incident Investigation) states that 'the sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability'. Any investigation conducted in accordance with the provisions of the Annex must be separate from any judicial or administrative proceedings to apportion blame or liability.

Safety Culture (of which Just Culture is an essential element) is addressed within the context of the establishing and implementing a State Safety Programme (SSP) in order to achieve an Acceptable Level of Safety Performance (Annex 19 to the Convention on International Civil Aviation – Safety Management, and ICAO Document 9859 – Safety Management Manual). A SSP – an integrated set of regulations and activities aimed at improving safety – provides a framework within which services providers are required to establish a Safety Management System (SMS). An effective SMS generates an enhanced safety culture and provides the necessary management environment for an organization to readily identify and resolve systemic safety problems.

At an EU level, regulations provide that a Member State waives the initiation of sanction proceedings if it becomes aware of an incident based on a report within the framework of the Just Culture and there is no gross violation or no serious consequences in individual cases. The requirement for a SSP is described in the EASA Basic Regulation (EU No 2018/1139), the scope of which includes monitoring of application of Regulation (EU) No 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation (see further information on this in Section 4).

3 PREVIOUS ICB WORK ON JUST CULTURE

Advice on Just Culture was last developed by the ICB a decade ago. ICB letters in 2008 and 2010 urged the Commission to strengthen the principle of Just Culture, raise awareness and educate the relevant actors from the transport and judicial worlds on their responsibility in keeping European aviation safe, and to strengthen the efforts of the Transport and Justice Directorates. At the time this was in the context of the SES High-Level Goals, and maintaining and enhancing safety whilst tripling capacity and improving efficiency of European skies.

The ICB also called for additional actions to ensure that the key elements of a 'Just Culture' are fully appreciated not only by safety experts and aviation personnel in general, but equally and especially by those involved in the administration of criminal justice in Member States.

4 REGULATORY DEVELOPMENTS IN JUST CULTURE

Just Culture has in the last decade been embraced by stakeholders in aviation and has been incorporated into EU-wide legislation. In 2010 Regulation (EU) No 996/2010 on the investigation and prevention of accidents and incidents in civil aviation was adopted, and subsequently amended by Regulation (EU) No 376/2014. The regulation requires that civil aviation system should promote a Safety Culture facilitating the spontaneous reporting of occurrences, and thereby advancing the principle of a Just Culture. Just Culture is an essential element of a broader Safety Culture, which forms the basis of a robust safety management system.

Regulation (EU) No 376/2014 also states that 'the objectives of the Regulation can be achieved without interfering unduly with the justice systems of the Member States. It is therefore appropriate to provide that unpremeditated or inadvertent infringements of the law that come to the attention of the authorities of the Member States solely through reporting pursuant to this Regulation should not be the subject of disciplinary, administrative or legal proceedings, unless where otherwise provided by applicable national criminal law.'

In 2010, safety was defined as a Key Performance Area of the SES Performance Scheme (Regulation No 691/2010). The Safety KPI for RP3 is 'the minimum level of the effectiveness of safety management to be achieved by ANSPs certified to provide air traffic services'. It measures the implementation of safety management objectives, including the development of a positive and proactive organisational culture. In implementing the performance scheme, the Commission and Member States are required to coordinate with EASA to ensure that the safety KPIs and performance targets are consistent with the European Plan for Aviation Safety referred to in Article 6 of Regulation (EU) 2018/1139.

EASA publishes Acceptable Means of Compliance (AMC) and Guidance Material (GM) for the implementation and measurement of Safety KPIs in accordance with the SES Performance Scheme. Measurement of the Safety KPI is through the periodic answering of questionnaires, which is provided in the EASA AMC and GM appendices.

5 RECENT SWISS JUDICIAL CASE

In April 2019, the Federal Criminal Court in Bellinzona (Switzerland) sentenced a skyguide ATCO to a heavy fine for negligent disruption of public transport. The conviction related to an incident on 12 April 2013, where two aircraft unintentionally

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converged in the complex airspace over the Napf region (Lucerne); the safety nets worked as planned, so that the situation could be defused quickly, with no personal injury or damage to property. The ATCO and one of the pilots reported the incident openly, thereby initiating an internal and external investigation. An appeal by the ATCO was rejected, and the sentence was made legally binding.

Such incidents could have negative consequences on the trust relationship necessary for the reporting of occurrences and for achieving a Just Culture. Skyguide highlighted that to learn the necessary lessons from such mistakes and to continuously improve the system, the Just Culture safety culture that is practised in aviation is crucial. Skyguide also questioned whether criminal law is the right means of dealing with an incident in which the safety system has functioned as expected and in which no personal injury or damage to property has occurred.¹

In November 2019 though, another skyguide ATCO was cleared of all allegations by the highest court for a very similar incident.² Swiss parliament has since forwarded a proposal to the Swiss government for an amendment of the law, with skyguide stating that it “is convinced that Swiss law must provide a framework for the “Just Culture” safety culture that is practised in aviation” to encourage employees to report errors without having to fear disciplinary consequences.

6 OTHER MATERIALS

In 2015 a **European Corporate Just Culture declaration** was published by industry.³ The Declaration supported the Just Culture regulation (and particularly 376/2014) on the reporting, analysis and follow-up of occurrences in civil aviation. The signatories to the Declaration committed to encouraging their respective members to implement a Just Culture based on the key principles in the Declaration.

Just Culture Toolbox, targeted at staff and managers within organisations providing ATM/ANS. Co-authored by the ATM Partners for Just Culture: ATCEUC, CANSO, ETF, IFAIMA, IFATCA, IFATSEA. The Toolbox developed out of work surrounding the introduction of EU Regulation 376/2014 on occurrence reporting.⁴

IFATCA Just Culture Guidance material.⁵

EUROCONTROL Just Culture Task Force, Just Culture **Model Policy** regarding criminal investigation and prosecution of civil aviation incidents and accidents, and Just Culture **judiciary course (prosecutor expert)**.⁶

¹ <https://www.skyguide.ch/en/events-media-board/news/#p95885-95887-95888>

² https://www.skyguide.ch/wp-content/uploads/2019/11/INMR2019-11-08-E-Double-Take-off-Freispruch-Bundesgericht_FINAL.pdf

³ <https://ec.europa.eu/transport/sites/transport/files/modes/air/events/doc/2015-10-01-just-culture/declaration.pdf>

⁴ https://www.canso.org/system/files/Regions_and_Programmes/Just%20Culture%20Toolbox%202018.pdf

⁵ <https://www.ifatca.org/education/guidance-material/just-culture/>

⁶ <https://www.eurocontrol.int/initiative/just-culture>

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CANSO/Eurocontrol Just Culture Climate Survey, as part of the annual measurement of the safety maturity of the ANSPs,⁷ to provide organisations with a gap analysis where their just culture climate could be improved. Part of the CANSO Standard of Excellence in Safety Management Systems, a self-assessment tool for ANSPs to ensure all aspects of their SMS are developed.

7 FOCUS FOR THE ICB WG

Whilst much has been achieved in Just Culture, many feel that the job has not been completed. In particular, one area where Just Culture has not yet permeated is the judiciary systems.⁸ The recent conviction in Switzerland has brought this to the foreground, with the Swiss Parliament proposing an amendment to implement the EU provisions and eliminate contradictions in Swiss Law.⁹

The key for judicial involvement is defining the boundary of what constitutes wilful disobedience or gross negligence, and who draws the line between acceptable and unacceptable behaviour. Prosecutors are bound by criminal law and may make a different interpretation to that made within aviation, dependent on the national laws of that country.

Considering the current landscape for Just Culture, the ICB should review if more needs to be done to fully implement Just Culture and what actions are recommended to the Commission.

Some examples for consideration of where action could be taken include recommendations on:

- Future Commission research (and guidance) on negligence, and also destructive acts and disobedience, in the context of Just Culture and the harmonisation of common legal concepts. This should include the context of latest ATM concepts such as automation and the data service layer.
- Encouraging Member States to implement a national safety prosecution policy confirming that only gross negligence and wilful misconduct will be prosecuted.
- Recommend to both EC and EASA that they request the States/NSAs to report whether they have started discussions with administration of justice on the 'advanced arrangements', as mentioned in 376/2014;
- Consideration of the KPI discussion into the Advance Arrangements (AA) PI field. All involved actors should be familiar with AAs, and they should be updated on a regular basis.
- Encouraging participation of: NSAs in the Eurocontrol Just Culture roadshow; judiciary to the ECTL/IFATCA/ECA Prosecutor Expert Courses; EC in the EUROCONTROL Just Culture Task Force.

⁷ <https://www.canso.org/canso-standard-excellence-safety-management-systems-0>

⁸ Managing a pragmatic just culture implementation, Rudy Pont, 2019.
<http://justculture.be/wp-content/uploads/2020/08/Managing-a-pragmatic-Just-Culture-implementation.pdf>

⁹ <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20190478>