

1. HANSP JUST CULTURE POLICY

Regarding criminal investigation and prosecution of civil aviation incidents and accidents

Objective

The objective of this Just Culture Policy is to provide directions regarding the criminal investigation and prosecution of potential criminal offences resulting from aviation accidents or that come to the attention of prosecutors through the reporting of civil aviation incidents. Those directions are warranted by the recognition that safety is paramount to aviation, and that preserving safety is in the public interest. Ensuring a judicial process in the aftermath of aviation incidents or accidents which achieves a balance between justice and safety requirements is essential. This is recognised in a number of international legal texts: ICAO Annex 13 regarding accident and incident investigation (in particular Attachment E providing legal guidance); ESARR 2; EU Regulation No 376/2014, amending EU Regulation No 996/2010 and relevant provisions of national Aviation laws.

Scope of application

This Policy applies to the criminal investigation and prosecution of criminal offences resulting from civil aviation accidents or from incidents reported under mandatory and voluntary occurrence reporting schemes.

Contact with investigation bodies/safety managers

In case of accidents or serious incidents, the representatives of the judicial authorities (police, prosecutors) will contact the investigation board in charge of the ICAO Annex 13 investigation with a view of coordinating positions and priorities.

Upon becoming aware of an incident, through, inter alia, an incident report, prosecutors will contact the relevant national safety authority, such as the investigation board or the Civil Aviation Authority. They will also contact, as appropriate, the safety managers of the Air Navigation Service Providers, the airlines or the airport authorities in order to exchange necessary information, discuss use of evidence and possible coordination.

This should be done with due respect for and recognition of the responsibilities and independence of each entity, and relevant applicable laws. The objective is to ensure effective investigation and decision making processes in order to maintain and improve public safety as well as the administration of justice.

Evidence

> Report

An incident report filed under a mandatory and voluntary occurrence reporting scheme cannot be used as evidence in criminal proceedings against the reporter. Accidents and incident reports done by investigating bodies or entities under ICAO

Annex 13 and EU Regulation No 376/2014, amending EU Regulation No 996/2010, cannot be used in criminal proceedings against individuals.

> Witness Declaration

A witness declaration received in the context of a safety investigation cannot be used as evidence in criminal proceedings against the person having made that declaration.

> Prosecution

No prosecution will be brought against individuals for actions, omissions or decisions which reflect the conduct of a reasonable person under the same circumstances, even when those actions, omissions or decisions may have lead to an unpremeditated or inadvertent infringement of the law. Nothing in this Policy should prevent criminal prosecutions in the event of intentional wrongdoing or gross negligence¹.

> Expert support

Prosecutors should avail themselves of the necessary expert support from the aviation Domain.

¹ Gross negligence is referred to in a number of EC instruments but there does not seem to be a commonly agreed definition of gross negligence in Europe. It seems to be however generally agreed that 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. Although a number of States assimilate gross negligence and intentional harm/wrongdoing, it is not always the case. Hence the proposal to add intentional wrongdoing in the list of cases that should be subject of prosecution - it will ultimately be up to each State implementing the Model Policy to refer or not to intentional wrong doing in view of its national legal framework.