

“A TALE OF TWO CITIES” SAFETY AND JUSTICE HOW THE BRIDGE MUST BE BUILT

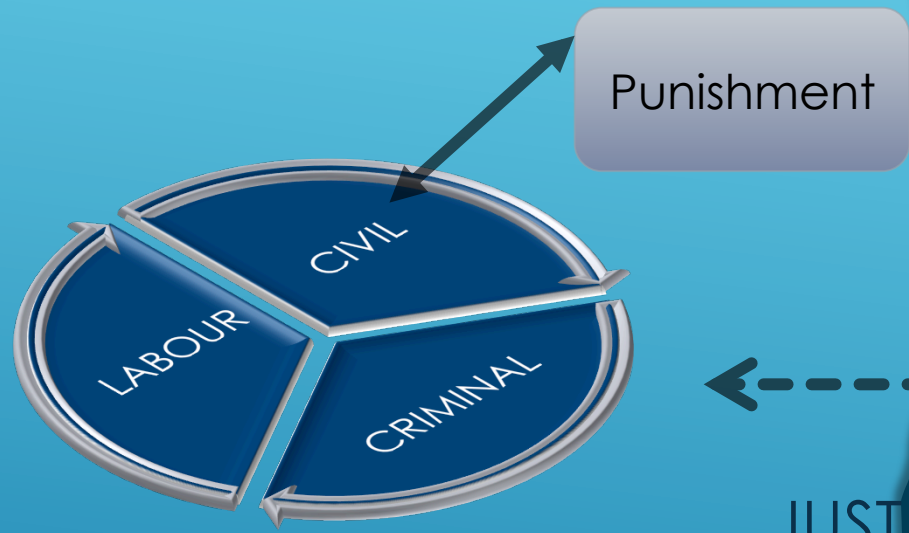
Prof. Dra. Irene Nadal Gómez

Professor of Law at the University of the Balearic Islands

‘Just Culture in Spain – how to open the link between
aviation and judiciary’

CITY OF JUSTICE

ADMINISTRATION OF JUSTICE



Legal Actions

Rule of Law

CITY OF SAFETY

SAFETY INFORMATION



Safety Management System

Safety Culture



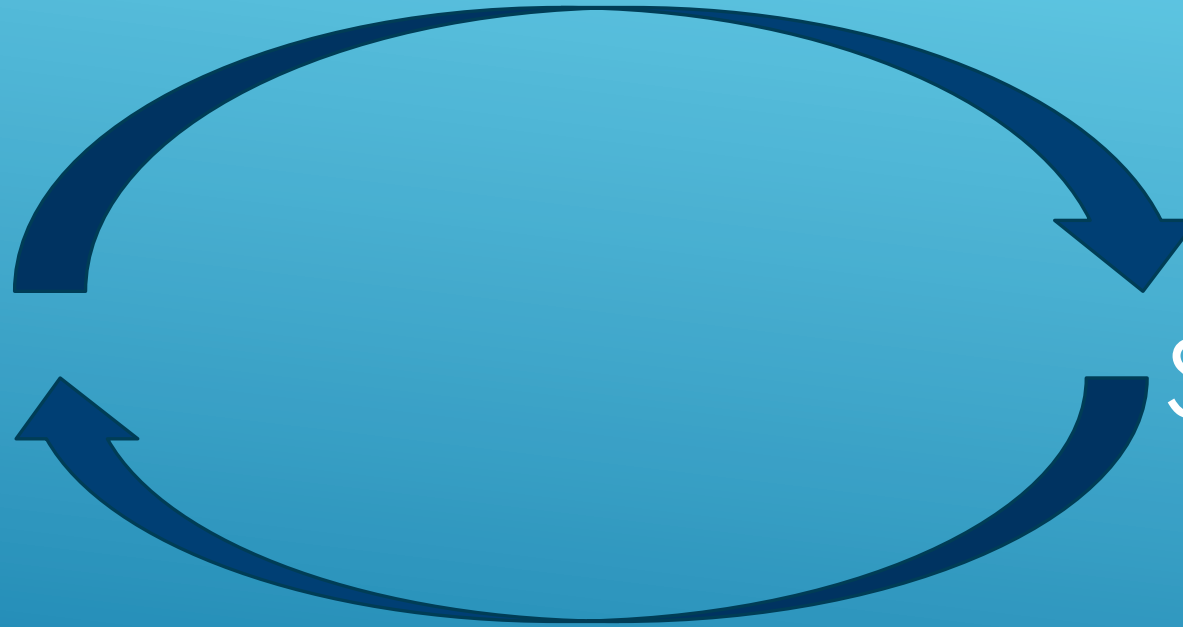
JUSTICULTURE

TWO-WAY LANE BRIDGE

DECIDE ABOUT FACTS WHICH
INVOLVE SAFETY

WHAT FACTS OR CONDUCTS OF INDIVIDUALS MUST BE
BROUGHT TO JUSTICE ?

Adminstration
of Justice



Safety Info

PROVIDE INFORMATION

WHAT INFORMATION SHALL BE USED AS EVIDENCE ?

WHAT IS TO BE BROUGHT TO JUSTICE

Civil Justice

Safety

CONSUMER RIGHTS

- Judgement of CJEU of 4 May 2017 C-315/15

Legal concept of “Extraordinary circumstances” and ‘reasonable measures’ to avoid extraordinary circumstances and consequences thereof: a bird collision and checks to be performed.

Issue at stake: safety check conducted by an authorized firm.

- Court ruling: 2nd check was deemed as not reasonable.

- What if damage had been found at the performance of the second check?

- What if the second safety check had not been conducted following the “no reasonable measure” precedent and an accident had occurred?

WHAT INFORMATION

Civil Justice

- A negligent misconduct by an Air Carrier (or any of its employees) must be proven for victims to be awarded full compensation.

- The following Liability Court rulings incorporated a Final Report or parts thereof, such as the transcript of the CVR or the Conclusions, as key documentary evidence .

SAP Granada 74/1999 of 1 of February , upheld by TS/ AP Almería 108/2000 of 31 of March , upheld by TS, AP Málaga 377/2006, of 30 of June , AP of Madrid no.479/2009, of 16 of November...

Safety

- Provision 19 of the LSA does not prevent the disclosure of the final reports

- The Final Report of the investigation of an accident conducted by the CIAIAC is used as evidence: atypical evidence

- This may bring about refusal of cooperation in technical investigations particularly by air carriers

- DECIDE: IF AND HOW THE FINAL REPORT SHALL BE INCORPORATED TO A CIVIL PROCEEDING.

WHAT INFORMATION

Labour Justice

Safety

Disciplinary measures

- Latest Supreme Court Judgements allow the Employer to impose disciplinary penalties, based on recordings made by recording devices placed at the workplace, unless the LSA is complied with or private agreements are reached. The Employer is not required to inform the employee about the punitive use of this recordings in advance.

- S TSJ Balearic Islands no. 26/2017 of 30 of January, penalty based on no protected information.

- Protected safety information must not be used in a punitive way (art. 16. 7 EU Reg 376/2014, provision 12 of (LSA)).

- However, in the event of gross negligence or significant ongoing safety concern it may be used to penalize an individual, in compliance with a particular proceeding.

- This safety information may be use as evidence in a labour tribunal if properly used by the Employer. Nevertheless, it is for the tribunal to decide upon as this may also be subject to debate.

WHAT IS TO BE BROUGHT

CRIMINAL JUSTICE TO JUSTICE

Safety

- Rule of Law
- Judicial preliminary investigation

Legal sources:

- CRIMINAL AND PROCEDURAL LAW OF AIR TRANSPORT:

- Crimes of abstract danger which are to be completed with technical rules. Therefore, the Judge applies a technical rule. First instance court decision of the Balearic Islands.

- Minor negligence not resulting in death or injuries is punishable

- CRIMINAL CODE :

- Cases of gross negligence or wilful misconduct with results

- CRIMINAL LAW SHOULD BE IN ACCORDANCE WITH SAFETY REGULATION AND JUST CULTURE



WHAT INFORMATION

CRIMINAL JUSTICE

The judicial preliminary investigation:

- usually arising from an accident investigation (Spanair case)
- Other cases with no convictions.

In court:

- The Final report, the CVR transcripts, other recordings, medical reports are used as evidence.
- Safety documents, such as MEL or Service Bulletins, are used as legal source

Safety

- Each item (recordings, statements...) are to be disclosed separately.
- The decision relies on a special authority: currently on the judge, but must that be it ?
- Trial involvement of individuals who are also engaged in the technical investigation. When and how?
- Even if information is disclosed, the probative value should be determined separately.