

# THE JUST CULTURE JOURNEY IN EUROPE: LOOKING BACK AND LOOKING FORWARD

As aviation changes to adapt to the changing world, and as people adapt to change, there is always the potential for things to go wrong. This brings us to the notion of ‘just culture’, which has also changed over the years, as **Roderick van Dam, Maria Kovacova** and **Tony Licu** describe.

## KEY POINTS

- **Just Culture has evolved significantly since 2005 when it was described in a EUROCONTROL safety report. It is now captured in EU law through EU Regulations 996/2010 (Accident and Incident Investigation), 390/2013 (Performance Regulation) and 376/2014 (Occurrence Reporting).**
- **Just Culture is an act of balance between safety and administration of justice interests. But the Just Culture concept does not simply identify two protagonists that are expected to sort out their respective roles and responsibilities.**
- **There is a need for Just Culture at the corporate (or organisational) level to help secure a healthy reporting environment. Internal processes have started to emerge for handling and assessing acts as reported within the organisation.**
- **There is an increased interaction with judiciary. The EUROCONTROL Just Culture Task Force (JCTF), in close cooperation with IFATCA and ECA, has reached out to more than 200 prosecutors, judges and other representatives of the judiciary from over 20 European States, inside and outside the EU.**
- **Aviation and the railways have teamed up to promote the Just Culture concept as a way of thinking in multi-modal transport, rather than a individual narrow ATM view.**

ways of working and to prevent and sanction unacceptable behaviour.

But there is concern among aviation and railway professionals, including air navigation service and infrastructure providers, airlines and railway safety regulators, manufacturers, railway undertakings and interest groups, about the interpretation of safety by the general public and especially by the criminal judiciary. This has led to growing fear of litigation and threat of criminal sanctions against individuals and organisations that are seen as partly or fully responsible for an incident or accident, which they may have reported. Words such as “criminalisation” are sometimes used to describe misdirected and unwarranted activities by the judiciary in the criminal law domain to address actions and events that should be dealt with in the safety domain.

In aviation, concepts such as ‘non-punitive reporting’ and ‘blame-free reporting’ were the precursors to the more realistic concept of ‘Just Culture’. In general, aviation/railway professionals seem to have accepted that calling for a blanket immunity is not the right way forward.

When the legal consequences of Just Culture were first discussed, the initial reaction was that most European States would need to amend their laws significantly. The general feeling was that a Just Culture could not be implemented without such changes. ►►

## Where are we coming from?

Ever since the systematic investigation of aviation accidents with the aim of accident prevention, there has been a problem of the use of these findings for other reasons.

The improvement of aviation safety is based, to a large extent, on feedback from a system of accident/incident data collection and analysis that serves the

whole industry as well as its regulators, allowing it to adapt and improve equipment and procedures. Learning depends on systematic and traceable records and active participation and reporting from all aviation actors.

In such safety critical domains as aviation and railways, criminal sanctions have always been an essential tool for sovereign States to enforce specific

The issue was not necessarily the need for legislative change, but rather the way in which existing laws and regulations were implemented and enforced by national judicial authorities.

### Realistic and mature

*“Just Culture 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.” (EU Occurrence Regulation 376/2014, Article 2, § 12, EUROCONTROL SAFREP Report 2005, Appendix B)*

The above Just Culture definition represents an integral and universal concept. The definition of Just Culture that emerged from the discussions in the EUROCONTROL Just Culture Task Force (JCTF) has now been adopted into EU law through EU Regulations 996/2010 (Accident and Incident Investigation), 390/2013 (Performance Regulation) and 376/2014 (Occurrence Reporting).

All EU States, as well as the growing number of Pan-European States that

have committed to implement EU legislation, are now expected to apply the JC principles. Just Culture addresses the mutual recognition of two key functions: Safety and Justice. These are two independently exercised functions that must interact to make sure that only acts of wilful misconduct and of gross negligence will be addressed by the judiciary and that ‘honest mistakes’ will not be prosecuted. But it is clear that, as wilful misconduct and gross negligence refer to criminally relevant behaviour, only a prosecutor – and not a chief pilot or an air traffic control room supervisor or a CEO – should make the call whether this is the case.

Striking that balance requires two important conditions. The first one is the creation of a dialogue at national level between safety professionals and prosecutors. The second, and perhaps the most difficult one, is the building of mutual trust and understanding.

A balanced corporate and judiciary environment will provide a sustainable basis for a incident reporting as well as accident/incident investigation. Both sides have in the past caricaturised each other: Judiciary, in their Ivory Towers, have been seen as the Ruthless

Crime Hunters with complete disregard for the intricacies and realities of civil aviation. The Safety Czars, the Pilots and Controller Interest Groups have evoked visions of pilots, controllers and managers behind bars and demanding full protection against criminal interference.

This is a good moment to note the consistently high professional standards and dedication of pilots, controllers, train drivers and controllers and other aviation and railway professionals. Almost without exception, they represent realistic and hard-working professionals who take great pride in their job and quite ready to continue to work in an environment that will provide them with the reasonable expectation that the chances that they would find themselves subject of a criminal process would be very small.

It is equally encouraging that our ongoing contacts and discussions with the judiciary in Europe and beyond yield a picture of realistic, reasonable and responsible professionals with a keen interest in the specifics of aviation safety, in learning more about the safety environment, while at the same time ready to draw the line when necessary.



## Just culture at corporate level

The Just Culture concept does not simply identify two protagonists that are expected to sort out their respective roles and responsibilities. Aviation is a complex industry where frontline operators work as an integral part of a wider system, interacting in teams with equipment and procedures. All actions must be seen in the context of the system as whole, and this system needs to be improved continuously, based partly on reporting. So there is a need for Just Culture at the corporate (or organisational) level to help secure a healthy reporting environment. As a result, internal processes have started to emerge for handling and assessing acts as reported within the organisation.

These initiatives may have been inspired by the provisions of the EU Occurrence Reporting Regulation 376/2014, which addresses, among other things, the reporting of incidents at corporate level and the European Corporate Just Culture Declaration of 1st October 2015. The Regulation encourages organisations to create internal Just Culture rules and the definition of a process, including the actors involved, to determine unacceptable behaviour

in accordance with its description in Regulation 376/2014.

Just Culture at corporate level addresses the need to establish a reporter-friendly and trust-based Just Culture environment in an ANSP, Airline or Railway company as the essential first layer of the balance between Corporate and National Judiciary.

The good news is that both the EUROCONTROL/ERA Model Policy for an Aviation or Railway Prosecution Policy, and the EU Regulations 996/2010 and 376/2014, foresee institutional provisions and even agreements to ensure an open connection between two functions and other relevant partners, such as the national Accident Investigation Body.

## Just culture and the administration of justice

Like safety, the administration of (criminal) justice forms one of the pillars of any civil society. Just Culture does not change that, but it does form part of the concept. The Just Culture definition, in order to protect “commensurate” behaviour, also singles out “unacceptable behaviour” in terms that describe criminally-relevant acts. It does

so by describing two categories of acts: gross negligence and wilful violations/ destructive acts. As is the case with acceptable behaviour, the descriptions are rather generic or colloquial.

As pointed out earlier, it is clear that criminally-relevant behaviour should only be assessed by a prosecutor. It is less clear how and when the prosecutor could be invited to follow the Just Culture principles and to decide whether or not to ‘draw the line’ as set out in the Just Culture definition.

The EUROCONTROL Just Culture Task Force (JCTF), in close cooperation with IFATCA and ECA, has reached out to more than 200 prosecutors, judges and other representatives of the judiciary from over 20 European States, in and outside the EU. The EUROCONTROL JCTF has developed a model policy for a national aviation/ railway prosecutions, to help national Prosecution Organisations to publish their own policy. A number of States are now at different stages towards establishing their own policy. The UK and The Netherlands, already have an Aviation Prosecution Policy in place.

Of course, the adoption of a policy that would limit prosecution to cases of





gross negligence or wilful misconduct depends upon the existing criminal law and procedural criminal law of a State. Even in the absence of a policy, discussions with prosecutors from more than twenty States have revealed a tendency – in particular with aviation or railway incidents to not formally prosecute such incidents (“No blood on the runway or the rails”), unless

**In Europe, Just Culture is maturing. That is happening because of a more mature understanding among different stakeholders of how Just Culture serves both safety and justice.**

unacceptable behaviour (e.g., a drunken driver, pilot or controller) played a role.

Another JCTF/IFATCA-ECA/ERA deliverable is the training of aviation/ railway experts to help national prosecutors – at their request – to understand the technical and operational aspects of a particular incident or accident. An ongoing series of discussions and exercises between pilots, air traffic controllers, train drivers, and train controllers has met with great enthusiasm from all participants. The first list of experts to be invited by a prosecutor for a first briefing is underway.

**Light at the end of the tunnel?**

Finally, let’s now take a look at the actual interpretation and acceptance of Just Culture as now imbedded in the EU and the pan-European domain. Recent

discussions related to ongoing national indictments and criminal court cases in ATC provide an important and realistic picture of the practical assessment implementation of Just Culture.

Just Culture is now established in Europe and widely recognised in other Regions, and by ICAO. It is based on a realistic concept that focusses on mutually recognised needs for any civil society: safety for its citizens and full respect of the rule of law.

In Europe, Just Culture is maturing. That is happening because of a more mature understanding among different stakeholders of how Just culture serves both safety and justice. The JCTF deliverables and a number of the provisions of Regulations 996 and 376 have been instrumental in starting discussions at the corporate level and also with and within the judiciary.

To put things into perspective, thousands of incident reports are generated yearly in each State. Of these, very few reach the prosecutor, mostly through the airline or provider involved. Often these are discussed in the context of regular informal meetings, which provide the prosecutor with a growing insight and understanding. But, of course, a prosecutor and a court may take decisions and actions in a case that others interpret differently. So be it. The law may be tough, but it is the law! The good news is that these discussions and views are increasingly held openly and will ultimately inform and benefit both sides.

The main conditions for a successful effort towards a widespread establishment of Just Culture in the aviation and railway domains have been identified and tested. Not surprisingly, they focus on harmonisation of applicable norms and (criminal) processes, on continuous communication and cooperation and, perhaps most importantly, on trust. **S**



Roderick van Dam (LLM International Law and Air and Space Law) was Head of the Legal Service of the Dutch CAA until 1990, when he joined ICAO as Senior Legal Officer and acting Head of the Legal Bureau. He joined EUROCONTROL in 1996 as General Counsel and Head of Legal Service, and retired in April 2012. Currently, he is Chairman of the EUROCONTROL Just Culture Task Force and President of the International Foundation for Public Aviation (IFPA). [rdvandam@gmail.com](mailto:rdvandam@gmail.com)



Maria Kovacova is an aviation safety enthusiast actively contributing to safety areas such as just culture, safety management gap analysis and proposals for safety improvements. After her graduation in aviation engineering, she continued her mission to improve safety processes in air navigation services, supporting just culture within the Slovak Republic, providing training. She is currently at the University of Košice undertaking a doctorate in Just Culture.



Tony Licu is Head of the Safety Unit within the Network Manager Directorate of EUROCONTROL. He leads the deployment of safety management and human factors programmes of EUROCONTROL. He has extensive ATC operational and engineering background, and holds a Masters degree in Avionics. [antonio.licu@eurocontrol.int](mailto:antonio.licu@eurocontrol.int)