



POLSKA AGENCJA ŻEGLUGI POWIETRZNEJ
POLISH AIR NAVIGATION SERVICES AGENCY
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JUST CULTURE **a lawyer's perspective**

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EU Regulation 376/2014

Each organization within EU shall, after consulting its staff representatives, adopt internal rules describing how “just culture” principles are guaranteed and implemented within such organization.

Article 16 subparagraph 11

This Regulation shall apply from 15 November 2015.

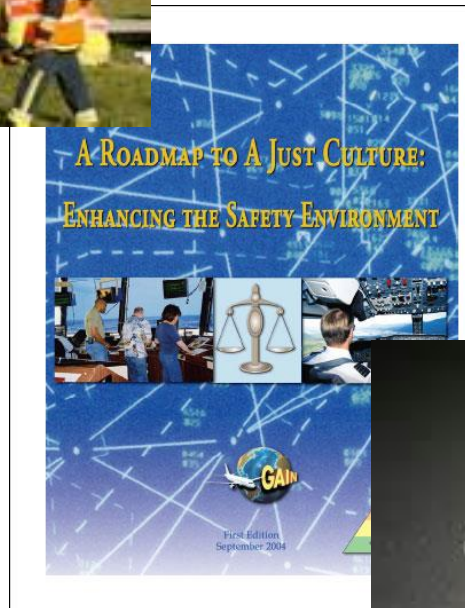


Just Culture is recognized by law

- **‘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;
- Article 2, point 12 of the 376/2014 EU Regulation



Different perspective





EU Regulation 996/2010

- The civil aviation system should equally promote a non- punitive environment facilitating the spontaneous reporting of occurrences and thereby advancing the principle of ‘just culture’
 - preamble, 24th recital



Legal basis for EU regulation in transport

Article 100 (ex Article 80 TEC)

1. The provisions of this Title shall apply to transport by rail, road and inland waterway.
2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.

versus

Article 84

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish **measures to promote and support** the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.



Just Culture vs criminal proceedings



- *Without prejudice to applicable national criminal law...*

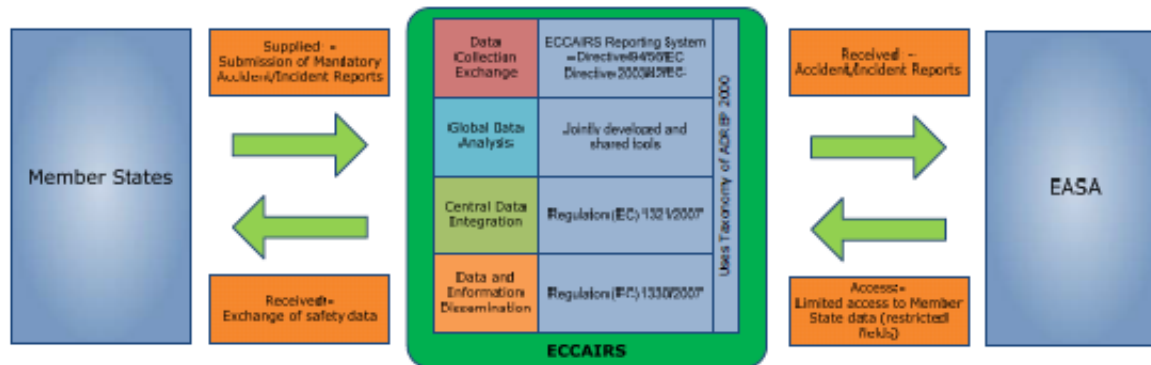


Polish Aviation Act

- Members of the safety team cannot be examined in the capacity of witnesses on facts gathered by them during air accident investigation
- Members of the safety team cannot be appointed to act as experts in prosecutors or court proceedings dealing with the accidents investigated by them



No criminal proceedings on occurrences ?



- prosecutors are not aware of occurrences other than accidents or serious incidents
- **accident** may constitute a criminal offence only, if resulted in catastrophe
- **serious incident** may constitute a criminal offence only, if resulted in direct and immediate danger of catastrophe



Accident investigation vs criminal proceeding

- Today, it is doubtful whether there are any jurisdictions anywhere in which accidental death or serious injury does not automatically give rise to formal investigation on behalf of the public. This is fundamental, deep rooted and expected by the community.

Harold Caplan, Which way to the just society?



Article 16.6 of the EU 376/2014 Regulation

- Without prejudice to applicable national criminal law, **Member States shall refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported pursuant to Articles 4 and 5.**
- The first subparagraph **shall not apply in the cases referred to in paragraph 10.** Member States may retain or adopt measures to strengthen the protection of reporters or persons mentioned in occurrence reports. Member States may in particular apply this rule without the exceptions referred to in paragraph 10.



Administrative proceeding

EC Regulation 805/2011 on ATCO licencing

Article 6

Suspension and revocation of licences, ratings and endorsements

In accordance with Article 22(2):

- (a) a licence, rating or endorsement may be suspended when the competence of the air traffic controller is in doubt or in cases of misconduct;
- (b) a licence may be revoked in cases of gross negligence or abuse



The border line (1)

Article 16 subparagraph 5

5. Member States and the Agency shall not be prevented from taking any action necessary for maintaining or improving aviation safety.



The border line (2)

Article 16 subparagraph 10

The protection under paragraphs 6, 7 and 9 of this Article shall not apply to any of the following situations'

a) in cases of wilful misconduct;

b) where there has been a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety.



Article 16.6 of the EU 376/2014 Regulation

- Without prejudice to applicable national criminal law, **Member States shall refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported pursuant to Articles 4 and 5.**

Is the notification from the CAA to the prosecutor's office „a proceeding“ ?

CAA notification to the prosecutor's office

Prosecutor launch the investigation to verify the notification

Prosecutor prosecute



Criminal proceeding (other than accidents)

EASA Basic Regulation (EU Regulation 216/2008)

Article 68

Penalties

Member States shall lay down penalties for infringement of this Regulation and its implementing rules. The penalties shall be effective, proportionate and dissuasive.

Articles 211 and 212 of Polish aviation act

Criminal punishment for intentional and unitentional breach of certain obligations (i.e. acting beyond the scope of the licence, ratig).



Employees protection

9. Except where paragraph 10 applies, **employees and contracted personnel** who report or are mentioned in occurrence reports collected in accordance with Articles 4 and 5 **shall not be subject to any prejudice by their employer or by the organisation for which the services are provided** on the basis of the information supplied by the reporter.

Article 16, subparagraph 9 of the 376/2014 EU Regulation



Just Culture policy

11. Each organisation established in a Member State shall, after consulting its staff representatives, **adopt internal rules describing how ‘just culture’ principles**, in particular the principle referred to in paragraph 9, **are guaranteed and implemented within that organisation.**

Article 16, subparagraph 11 of the 376/2014 EU Regulation



To sum up...

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ME**
YOU DONT KNOW
THE TRUTH

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Thank you !

Dziękuję 😊

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