

Some problematic issues of classification of aviation crimes

The thesis analyzes the illicit carriage of explosives or flammable substances on an aircraft, violations of international flight rules, violations of flight rules or preparation for them as a special category of crimes that cannot be committed without the use of an aircraft. The main attention was paid to the comparison of these crimes with classic aviation transport crimes.

Crimes that cannot be committed without the use of air transport.

The main part of criminal offenses in the field of air transport is placed in Section XI of the Criminal Code of Ukraine (hereinafter - the Criminal Code) "Criminal offenses against traffic safety and operation of transport." As noted by OF Bantyshev, within this group to a separate subgroup of crimes should include crimes related to the safety of airspace use [1, p. 7].

However, other sections of the Criminal Code also contain criminal offenses, which are inherently aviation, as their commission is constructively related to the aircraft.

The first of such criminal offenses is provided in Art. 269 of the Criminal Code illegal transportation on an aircraft of explosives or flammable substances (referred by the legislator to section IX of the Criminal Code "Criminal offenses against public safety"). The second can be considered as defined in Art. 334 of the Criminal Code "violation of the rules of international flights (placed in Section XIV" Criminal offenses in the field of protection of state secrets, inviolability of state borders, conscription and mobilization ").

The third example is Art. 416 of the Criminal Code violation of flight rules or preparation for them, contained in Section XIX "Criminal offenses against the established order of military service (military criminal offenses)".

Common to these offenses is that their commission is not possible without the use of air transport. Also, all three of these crimes are blanket, as they contain references to the basic legislation - the rules of transportation of explosives or flammable substances on the aircraft (Article 269 of the Criminal Code), the rules of international flights (Article 334 of the Criminal Code) and the rules of military flights (Article 416 of the Criminal Code).

However, there are significant differences. In particular, the main components of criminal offenses under Art. 269 and 334 of the Criminal Code does not provide for the occurrence of socially dangerous consequences, so the crimes are formal.

Along with this, the criminal offense under Art. 416 of the Criminal Code has a material composition, as a constructive feature is the cause of a catastrophe or other serious consequences. However, the corpus delicti under Part 2 of Art. 269 of the Criminal Code is material, because there is an indication of death or other serious consequences, and the sanction allows to classify this crime as serious.

Thus in Art. Art. 334 and 416 of the Criminal Code there are no qualified *corpus delicti*. Given the sanctions of these articles, criminal offenses under Art. 269 and 334 of the Criminal Code are minor crimes, and Art. 416 of the Criminal Code is a particularly serious crime.

Since the crime under Art. 416 of the Criminal code is the most severe, we will stop on some moments of its objective party. From the objective point of view, the crime is characterized by a socially dangerous act (actions or omissions), socially dangerous consequences in the form of a catastrophe or other serious consequences, the causal link between these acts and consequences, and may be expressed in violation of the rules: 1) flights; 2) preparation for flights; 3) operation of aircraft. Aircraft - it's air vessel held in the atmosphere due to its interaction with air, other than the interaction with the air reflected from the earth's surface, and capable of maneuvering in three-dimensional space. Military aircraft include aircraft, including unmanned, helicopters, gliders, balloons, etc., which belong to the Armed Forces, Air Force, other military formations of Ukraine and are registered in the register of state aircraft.

In general, violation of flight rules, preparation for them and operation of aircraft involves violation of the established procedure for organizing, performing and ensuring flights, supervising and controlling their flight safety, ensuring flight safety, its prevention, etc. Rules of flights and preparation for them, operation of aircraft are established in acts of international and domestic law, in particular, in acts of the Committee on the Use of Airspace of Ukraine, advisers on aviation engineering and navigation service of the Armed Forces. These rules may be violated during combat training, as well as the performance of test, demonstration, special flights or preparation for them, participation in exhibitions and competitions, and so on. If the violation of the rules of flight of military aircraft was combined with the violation of the rules of international flights, then for intentionally illegal entry into Ukraine or departure from Ukraine, the crew of a military aircraft are liable under Art. 331, and for other violations of the rules of international flights, which did not cause the consequences provided for in Art. 416, - for Art. 334.

Deviations outside the air routes in cases of bypassing dangerous weather events, forced landing in emergencies and other situations that threaten flight safety, and other similar acts should be considered in accordance with the provisions of Art. Art. 39 and 42. Soldiers who have violated the rules of flight of military aircraft after their theft, are responsible for a set of crimes under Art. Art. 278 and 416.

The subject of the crime may be servicemen - members of the crew of a military aircraft (commander, navigator, flight engineer, etc.), as well as other persons who are responsible for the relevant regulations to ensure the rules of flight or preparation for them (flight director, aircraft technician, mechanic, dispatcher, etc.) - servicemen and conscripts during the meeting.

From the subjective point of view, the crime is generally characterized by a careless form of guilt. The attitude to violation of specific rules can be intentional.

From the above we can draw the following conclusions.

Crimes under Art. 269, 334, 416 of the Criminal Code have many common features, because their commission is not possible without the use of air transport. At present, there are all grounds for scientific analysis of these crimes in the framework of

crimes related to the safety of airspace use. In addition to the criminal offenses in the field of air transport, which are now listed in Section XI of the Criminal Code "Criminal offenses against traffic safety and operation", this group of crimes also meets all the criteria for aviation crimes.

At present, there are all grounds for a scientific analysis of these crimes in the framework of crimes related to the safety of airspace use. At the same time, during the formation of the new Criminal Code and the removal of aviation crimes to a separate section of the encroachment, provided for in Art. 269, 334,416 of the Criminal Code should be included in this newly formed section.

References

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