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Criminal legal protection of safety of civil aviation under the legislation of Ukraine (art. 276-282 of CC of Ukraine)

This article examines the definition of the term “crimes in the field of civil aviation”. The authors propose to predict the safety of civil aviation as a separate object of criminal law protection. The article gives a comprehensive and clear idea of the current understanding of crimes in the field of civil aviation.

At present, safety of Civil Aviation is one of the priorities of the legislation of all countries of the world. Ukraine is not an exception. In CC of Ukraine stipulated norms, which establish liability for socially dangerous actions that pose a threat to the security of civil aviation. The concept of security for the safety of civil aviation is based on a number of international conventions that focused on security of civil aviation.

The main convention that constitutes the basis for civil aviation security is The Convention on International Civil Aviation, also known as the Chicago Convention. The Convention establishes rules of airspace, aircraft registration and safety, and details the rights of the signatories in relation to air travel. The Convention established the International Civil Aviation Organization (ICAO), a specialized agency of the UN charged with coordinating and regulating international air travel. ICAO codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth. As of November 2017, the Chicago Convention had 192 state parties, which includes Ukraine.

The dramatic increase in crimes of violence which adversely affected the safety of civil aviation during the late 1960's, resulted in an Extraordinary Session of the ICAO Assembly in June 1970 (Montreal, 16 - 30 June 1970). One of the resolutions of that Assembly called for specifications in existing or new Annexes to the Chicago Convention to specifically deal with the problem of unlawful interference, in particular with unlawful seizure of aircraft. Following the work of the Air Navigation Commission, the Air Transport Committee, and the Committee on Unlawful Interference, Standards and Recommended Practices on Security were adopted by the Council on 22 March 1974 and designated as Annex 17 – Security. This Annex sets out the basis for the ICAO civil aviation security program and seeks to safeguard civil aviation and its facilities against acts of unlawful interference. The latest Amendment 10 to Annex 17 was adopted by the ICAO Council on 7 December 2001 in order to address challenges posed to civil aviation by the events of 11 September 2001. It became applicable on 1 July 2002. The amendment includes various definitions and new provisions in relation to the applicability of this Annex to domestic operations; international cooperation relating to threat information; national quality control; access control; measures related to

passengers and their cabin and hold baggage; in-flight security personnel and protection of the cockpit; code-sharing/collaborative arrangements; human factors; and management of response to acts of unlawful interference.

According to ICAO Annex 17, a set of international security requirements, 'unlawful interference' is defined as "... acts or attempted acts such as to jeopardize the safety of civil aviation, including but not limited to: unlawful seizure of aircraft, destruction of an aircraft in service, hostage-taking on board aircraft or on aerodromes, forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility, introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes, use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment, communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility".

So there are reasons to consider these provisions as guidelines for the construction of norms on criminal liability for crimes in the field of civil aviation (aviation crimes).

Ukraine has provided for a number of rules on criminal liability for certain socially dangerous actions in the sphere of safety of civil aviation. Article 277 provides for criminal liability for willful destruction or damage of communication routes, constructions on these routes, rolling-stock or vessels, signal and communication means. The consequence of this crime in air transport is an accident. Under the accident, the legislator understands the damage to aircraft, airfield equipment, signaling and communication equipment, forced landing of the aircraft. Criminal responsibility occurs regardless of whether there was an accident or only conditions were created for its occurrence.

An aggravating circumstance are when the acts caused medium grave or grave bodily injury to the victim, or caused significant pecuniary damage or where they caused death of people. Article 278 provides for criminal liability for hijacking of a rolling-stock, aircraft or sea/river vessel. An aggravating circumstance are when acts committed by a group of persons upon their prior conspiracy, or accompanied with violence not dangerous to the victim's life or health, or if committed by an organized group, or accompanied with violence dangerous to the victim's life or health of other persons, or caused death of people or any other grave consequences. Article 279 provides for criminal liability for blocking of transportation routes, and capturing of a transport enterprise (including airports) - capturing a railway station, airfield, port, station or any other transportation enterprise, institution or organization. An aggravating circumstance are when acts caused death of people or any other grave consequences. Article 280 provides for criminal liability for compulsion of a worker of railway, air, water, motor, municipal transport or trunk pipelines to misconduct in office by threats of murder, grave bodily injuries or destruction of his/her property or close relatives. An aggravating circumstance comes for the same actions, if repeated, or committed by a group of persons upon prior conspiracy, if acts committed by an organized group or attended with violence dangerous to the victim's life or health, or where they caused death of people or any

other grave consequences. In the above crimes, the harm to the safety of civil aviation is inflicted by a person who is not an employee.

Article 276 provides for criminal liability by a worker of railway or water or air transport, and, also repair works of poor quality performed with regard to transport, railways, signal and communication means, where this violation exposed human lives to danger or caused the risk of any other grave consequences. An aggravating circumstance are when caused medium grave or grave injury to a victim, or caused significant pecuniary damage, or where they caused death of people.

This is why, in our opinion, a significant disadvantage of Ukrainian legislation is the fact that there are no separate types of crimes in the field of civil aviation.

All listed socially dangerous acts are considered in the context of transport crimes. Criminal liability is established for socially dangerous acts against the safety of the movement and operation of such modes of transport as rail, water and air. At the same time, the specifics of aviation transport and international legislation, which establish measures to ensure aviation security is not considered. This situation leads to conflict of laws in the application of specific provisions of criminal law of Ukraine. For example, there are no clear guidelines for the dismantling of such crimes as hijacking of a rolling-stock, aircraft or sea/river vessel (Art. 278 CC of Ukraine) and compulsion of a worker of railway, air, water, motor, municipal transport or trunk pipelines to misconduct in office (Art. 280 CC of Ukraine). In our opinion forced the pilot to change the flight plan to fly for other purposes to plan, and in a different destination and means hijacking of aircraft. There is a certain specificity regarding socially dangerous actions in the sphere of civil aviation. If sea and river vessel can be captured, for example, to simply drive, then hijacking and seizing an aircraft entails more dangerous consequences. Especially, in our opinion, it is a mistake not to differentiate by the degree of danger the actions committed with respect to the aircraft and ground transportation. The legislator provided for the same punishment for acts that may lead to a variety of dangerous consequences. Illegal acts in the aviation sphere have great social danger and the punishment for their commission must be more serious. Among crimes against traffic safety and operation of transport is stipulated only three articles that contain the elements of crimes directed directly against the safety of aviation. Article 276-1 CC of Ukraine provides for criminal liability for professional activity or member of the crew of air traffic controller air traffic control (dispatcher Traffic Service) intoxicated or under the influence of narcotics or psychotropic substances. This rule is definitely necessary as this action can have serious consequences. At the same time, in the Air Code the norm of controlling the state of the crew and air traffic controllers is delayed. In the disposition of article 276-1, appraisal concepts that are evaluation concepts which need to be interpreted. Therefore, it is difficult to apply this norm. For example, it is difficult to determine the time of committing this crime. It is also not defined who should be considered crew members. Although the punishment for all subjects is identical, it should be understood that different crew members perform different functions (in terms of complexity and responsibility). Therefore, punishment should be approached in a differentiated way. Today there is a tendency

towards selective checks and the removal of flight crew members who are in a state of intoxication. Involving them in criminal liability is not widespread. It is also illogical that there is no sanction in this article for such a punishment as deprivation of the right to engage in certain activities (Art. 55 CC of Ukraine).

From the above we can draw the following conclusions.

The serious disadvantage of the criminal legislation of Ukraine in the siege of aviation crimes is its imbalance. It should be legally foreseen the safety of civil aviation as a separate object of criminal law protection. Damage to the safety of civil aviation is much more dangerous than the safety of other vehicles. It is necessary to distinguish certain norms in the Criminal Code in which to establish the responsibility for acts which are explicitly provided in Annex 17 to the Chicago Convention. For example, in the Criminal Code of Ukraine there is no separate norm which establishes responsibility for seizing hostages on board an aircraft. Disposition of Art. 147 of the Criminal Code of Ukraine "Capture of hostages" is formulated so that it is almost impossible to apply in case of capture of capture of hostages on board an aircraft. There are no separate norms establishing responsibility for air piracy, placing on board a civilian aircraft or at an airport, dangerous weapons or radioactive materials and devices. The Criminal Code of Ukraine contains only general norms that are difficult to apply to specific situations posing a threat to civil aviation.

Although it is not possible to say that Ukraine ignores the requirements of the Chicago Convention, it should be recognized that the norms of the criminal law establishing liability for crimes in the field of civil aviation do not entirely meet the requirements of Annex 17.

ICAO is able to succeed only in the case of the provision by States parties of safe and reliable activity of the industry. That is, legislatures of 191 countries must strictly and consistently implement in their criminal law the provisions of the Conventions. Particular attention should be paid to developing a common understanding of such phenomena as crimes in the field of civil aviation and the development of conceptual approaches to the criminal law response to these crimes. Great value in this case should also be the approach to understanding the special terminology used in the Conventions. Now in the Ukrainian criminal law there is no uniform approach to the understanding of individual phenomena in the field of safety of civil aviation.

All this suggests the relevance of this topic. Despite the measures taken by the international community, in particular the hijacking of aircraft continues. Recently, there is a real threat to the use of an aircraft for attacking ground targets.