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COMPLIANCE OF DOMESTIC CRIMINAL LAW WITH INTERNATIONAL STANDARDS REGARDING LIABILITY FOR HIJACKING AND SEIZING AN AIRCRAFT

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Abstract

Purpose: the main task of this scientific research is to study the problem of public danger, which arises as a result of the capture or hijacking of an aircraft. The problems of criminal responsibility for this socially dangerous act have been studied in this article. **Methods:** optimization of the legislation providing for criminal liability for this crime in accordance with the criminal legislation of Ukraine. **Results:** the socially dangerous consequences resulting from the seizure or hijacking of an aircraft were investigated. The issues of delimitation of socially dangerous acts that constitute the objective side of this crime are investigated.

Discussion: objective and subjective signs of the crime, the main international normative acts aimed at ensuring aviation security, compliance of the norms of domestic criminal legislation with international norms and standards in the field of aviation security.

Keywords: aviation security; civil aviation; criminal liability; hijacking aircraft; seizure.

1. Introduction

The social danger of these crimes consists in violation of aviation security in the part of violation of aviation security. Aviation security is a defense of civil aviation from the acts of unlawful intervention, which is provided by a set of measures with involving of human and material resources. The seizure of aircraft which is on earth or in flight, as well as an attempt to seizure of such aircraft and other acts of unlawful interference into civil aviation activity are considered to be the result of emergency event.

2. Problem and its connection with scientific and practical tasks

Among the emergency events besides the seizure of an aircraft are the situations connected with using of an aircraft in time when it was happen one of such results:

- the death or bodily harms of ones person at the time of his or her being on board of aircraft caused by negligence or intentional actions of victim or other persons not related with breakdown of the aircraft and its systems;

- the death or bodily harms of person, who at the time of his or her being on board of aircraft penetrated willfully without reasonable causes or documents through the limits of areas of the aircraft, where access to passengers or crew members was barred;

- the death or bodily harms of person on board of aircraft caused by environment after the forced landing of an aircraft outside the airport;

- the death or bodily harms of person outside of an aircraft caused by contact with an aircraft itself or with its parts;

- the destruction or serious damage of an aircraft on the ground, which caused the structural failure of it or an impairment of aircraft performances, which became a result of environmental influence, maintenance imperfection or violation of rules for storage and transportation.

3. Analysis of result research

The main normative statements directed on protection of aviation security are acting on three levels:

- the global level (The International Civil Aviation Organization (ICAO), the general

documents of it: *The Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963); *The Convention for The Suppression of Unlawful Seizure of Aircraft* (The Hague, 1970); *The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Montreal, 1971); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal, 1988, supplementary to the *Montreal Convention* of 1971); *The Convention on the Marking of Plastic Explosives for the Purpose of Detection* (Montreal, 1991); *The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Pekin, 2010);

- the regional level (The European Aviation Safety Agency (EASA), European Civil Aviation Conference (ECAC), European and North Atlantic Office of ICAO (Paris), the general documents – *ECAC Policy Statement in the Field of Civil Aviation Facilitation*;

- the national level – The State Aviation Administration of Ukraine, the general documents: *The Air Code of Ukraine* on 19 May 2011, The Law of Ukraine “On State Programme for Aviation Safety of Civil Aviation” on 20 February 2003, the Order of The Ministry of Transportation and Communication of Ukraine № 390 on 11 May 2007, The Instruction for Evaluation of The Level of Threat to Security for Civil Aviation Ukraine.

The acts of unlawful intervention are the actions or the attempts to commit any action that could provoke a danger to safety of civil aviation and air transport among them are such as an aircraft unlawful seizure; a destruction of aircraft in service; an act of hostage taking on board of aircrafts and on aerodromes; forcible penetration on board of the aircraft, at the airport or at the place of location of air navigation facilities or services; the placing of weapon, dangerous gadget or other materials for criminal purposes; the using of aircraft on service with the aim of inflicting the death, bodily injuries or heavy damage for property or environment.

4. Setting objectives

The direct object of the crime is the safety of aviation in part of counteracting to such acts of unlawful interference as hijacking or seizure of the aircraft.

In the Art. 278 of Criminal Code of Ukraine there is a norm according to which criminal liability is predicted for commitment of two of the most socially dangerous acts of unlawful interference into

activity of civil aviation – hijacking and seizure of aircraft.

The crime *corpus delicti* of which is predicted in disposition of Art. 278 of Criminal Code of Ukraine is thought to be a conventional crime, so it is provided with international agreement as socially dangerous offence in international area. The punishability for it should be established in national legislation.

The first step of ICAO for creation of international legal basis in the area of civil aviation security was *Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft* (1963). Nevertheless the sphere of action for this Convention is very limited therefore it applies only to acts or offenses committed in certain period of time: on the aircraft in flight or on the surface in high sea, in any other area of any other region outside the borders of any state (the state which had joined to the Convention).

It is important in this case the interpretation of term “an aircraft in flight”. According to p. 3 of Art.1 of this *Convention* an aircraft is considered to be in flight from the moment when engines are started for the purpose of take-off until the moment when landing run ends. In the p. 2 of Art. 5 the content of it is extended: “an aircraft shall... be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation” [1] [2] [1].

In the Art. 11 of *Convention* it is said that aircraft commander or any other member of aircrew and other passengers have right to counterforce on unlawful seizure of aircraft, namely: “When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft” [2]. The number of acts of illegal intervention into civil aviation of many states with aviation was grown in the late 1960s. The wave of violence on air fleet made ICAO immediately develop and implement The Hague (1970) *Convention for The Suppression of Unlawful Seizure of Aircraft*.

This Convention was more modern. It had some new important statements:

a) The unlawful seizure of aircraft is an international crime, therefore it obliges the states to propose the severe punishment for this crime;

b) The propositions of Convention shall be applied both to international flights of aircrafts and to national airways;

c) The crime is considered to be such actions as unlawful seizure of aircraft or realization of control on it by the way of violence, by the threat of violence or by the other form of intimidation [2].

The crime is considered to be an attempt to commit such actions and complicity in committing of such offense. The *Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* came into force immediately after the Hague Convention in 1971.

According to the statements of this Convention could be seen the conception of “an aircraft in service” – the time of crimes and other unlawful acts of interference into activity of civil aviation is not only the flight itself, but also the period of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. It is also proposed the definition of sabotage on aircraft which stands on the ground. In the Art. 1 of Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are determined the actions directed against the security of civil aviation that should be considered as crimes.

Each person commits an offence if he or she unlawfully and intentionally:

a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft (In our opinion this type of criminal activity includes the examples of hijacking an seizure of aircraft).

b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;

c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight etc. [3].

The sabotage is considered to be an unlawful act against the person at the international airport which provokes or could provoke trauma, bring death; or could become a reason of destroy or damages of air navigation facilities of an airport and an aircraft out

of service that is placed at the airport; or could disrupt functioning of the Services of the airport.

5. Presenting main materials

The objective aspect of crime reveals in the form of two alternative actions: hijacking and seizure of aircraft. Hijacking is unlawful displacement of an aircraft.

The seizure of aircraft is illegal influence to the person (group of persons) who is commanding by an aircraft; as a result of it the subject (subjects) of crime will get domination on the aircraft. The hijacking is considered to be completed when aircraft is in flight, that is to say when external doors of aircraft are closed before the flight until the moment of opening the doors after landing.

If hijacking was done by members of air team than completion of it should be considered the moment of track excursion or denial to follow the instructions of persons who manage the flight. If hijacking of aircraft is realized at the airport where an aircraft is parking than hijacking is considered to begin from the moment when engines start and an aircraft begins to move.

The seizure of aircraft is an unlawful capturing of aircraft with using of violence or threats of violence. The seizure of aircraft usually is the first step for hijacking. The crime is considered to be completed after the seizure of the vessel. If an extemporaneous flight was done by air crew, than the actions of the crew should be understood as a seizure. If the crew executes scheduled flight and during this time deviates from the course, than such actions should be considered hijacking.

The object of crime is a civil aviation aircraft and helicopter, dirigible and other aircraft which is supported in the atmosphere through its interaction with an air.

The rules predicted in the Art. 278 of the Criminal Code of Ukraine shall not be applied to aircrafts engaged in military and custom services. The scene of the crime is an aircraft in flight, and the aircraft on pre-flight preparation or the aircraft which is parked at the airport.

The way for the offense commitment is the using of violence or threats of violence against passengers and aircrew (the threat of realization of explosion or the threat of causing the death, etc.). The violent way of crime commitment is inherent for cases where the subjects of crime are outsiders, not members of the crew.

In the p. 2 of Art. 278 of the Criminal Code of Ukraine it is determined the criminal liability for hijacking with aggravating circumstances. The social danger increases greatly if hijacking or seizure of aircraft were committed in complicity with the using of violence. So conspiracy and violence as aggravating circumstances are predicted in the parts 2 and 3 of this article.

Nevertheless the level of social danger of these aggravating circumstances greatly matters. In p.2 are noted such aggravating circumstances as “a group of persons upon their prior conspiracy” and the way of “violence not dangerous to the victim’s life or health”. It is obvious that in this case we should think not about *victim*, but about *victims*, because usually a number of victims is large among them could be passengers, and members of air team.

A group of persons upon their prior conspiracy is a form of complicity in which two or more people had agreed on implementation of plan beforehand, earlier than actions that were the objective side of an offence had been started by them.

Physical violence not dangerous to the victim’s life or health usually is expressed in doing of bodily blows, beating, binding, holding etc. Mental violence is expressed in threats of physical violence. But for the occurrence of this crime on the aircraft such aggravating circumstances are unusual.

Typically, hijacking or seizure of an aircraft are connected with aggravating circumstances described in p. 3. of Art. 278 of the Criminal Code of Ukraine. Hijacking or seizures of an aircraft, as a rule are perpetrated in complicity. In p. 3. of Art. 278 of the Criminal Code of Ukraine is provided such form of participation as an organized group.

We understand the term “an organized group” as several persons (three or more) who have previously established a stable association for the purpose of committing of this and other offense. The assigned roles designed to achieve their plan are typical for organized group. (p. 3 Art. 278 of the Criminal Code of Ukraine).

A hijacking or seizure of an aircraft may become a form of aviation terrorism, namely it is committed as a terrorist act. In this case, such actions should be categorized by the Art. 258 of the Criminal Code of Ukraine as a “Terrorist act” particularly if accompanied by some assumptions of Art. 258-3, 258-4, 258-5 of the Criminal Code of Ukraine [4].

A significant attribute for qualifying of commitment of hijacking or for seizure of an aircraft is violence dangerous to life or to health of victims,

as usually this crime is accompanied by the use of firearms and explosives, so it determines the nature of violence. In any case when the criminal act was done with weapon or there was a threat of its use, such actions should be classified as actions accompanied with violence that are dangerous to life and health of victims.

Besides the complicity and the way for use of violence dangerous to life and health of victims in p. 3 of Art 278 there is such significant feature as a consequence – the death of persons or other grave consequences. The death of people should be understood as a death of at least one person – the passenger or a member of air team and also of persons who would took part in release of aircraft after landing. We should understand the term “other consequences” also as injuries of varying severity done for victims by criminal.

The subjective aspect of hijacking or seizure of an aircraft is expressed in direct intent. The person is aware of the actual signs of his or her act, understands the social danger of it and wants to achieve a particular dangerous consequence – to seizure the aircraft for the aim of hijacking. The motive and the purpose are among essential characteristics of this *corpus delicti* of this crime. These characteristics could differ: to be selfish, political, be terroristic by nature. Nevertheless it does not affect for the qualification of crime. It considered only in time of imposition of punishment.

6. Conclusions

In some cases, committing hijacking or seizure of an aircraft is qualified for a set of serious crimes as high treason (Art. 111 of the Criminal Code Ukraine), sabotage (Art. 113 of the Criminal Code of Ukraine), gangsterism (Art. 257 of the Criminal Code of Ukraine), illegal movement of persons across the state border of Ukraine (Art. 332 of the Criminal Code of Ukraine), violation of international flights regulations (Art. 334 of the Criminal Code of Ukraine), unlawful handling of weapons, ammunition or explosives (Art. 263 of the Criminal Code of Ukraine).

In certain cases on board of the aircraft may act unruly passenger. This is a passenger who does not submit to the rules of conduct at the airport or on board an aircraft or does not perform instructions of airport staff or flight crew members violating the order and discipline in the airport or on board an aircraft. The actions of such passengers with the

availability of certain signs should be qualified as hooliganism (Art. 296 of the Criminal Code Ukraine) or an administrative offense.

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Відповідність вітчизняного кримінального законодавства міжнародним стандартам щодо відповідальності за викрадення і захоплення повітряного судна

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Мета: основним завданням даного наукового дослідження є вивчення проблеми суспільної небезпеки, яка виникає як результат захоплення або викрадення повітряного судна. Проблеми кримінальної відповідальності за дане суспільно небезпечне діяння вивчені в цій статті. **Методи дослідження:** оптимізація законодавства, що передбачає кримінальну відповідальність за даний злочин згідно з кримінальним законодавством України. **Результати:** досліджені суспільно небезпечні наслідки, що виникають в результаті захоплення або викрадення повітряного судна. Досліджено питання розмежування суспільно небезпечних діянь, що становлять об'єктивну сторону даного злочину. **Обговорення:** об'єктивні і суб'єктивні ознаки складу злочину, основні міжнародні нормативні акти, спрямовані на забезпечення авіаційної безпеки, відповідність норм вітчизняного кримінального законодавства міжнародним нормам і стандартам у сфері авіаційної безпеки.

Ключові слова: авіаційна безпека; захоплення; кримінальна відповідальність; повітряне судно; ; угон; цивільна авіація.

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Соответствие отечественного уголовного законодательства международным стандартам по ответственности за похищение и захват воздушного судна

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Цель: основным заданием данного научного исследования является изучение проблемы общественной опасности, которая возникает как результат захвата или угона воздушного судна. Проблемы уголовной ответственности за данное общественно опасное деяние изучены в этой статье. **Методы исследования:** оптимизация законодательства, предусматривающего уголовную ответственность за данное преступление в соответствии с уголовным законодательством Украины. **Результаты:** исследованы общественно опасные последствия, возникающие в результате захвата или угона воздушного судна. Исследованы вопросы размежувания общественно опасных деяний, составляющих объективную сторону данного преступления. **Обсуждение:** объективные и субъективные признаки состава преступления, основные международные нормативные акты,

направленные на обеспечения авиационной безопасности, соответствие норм отечественного уголовного законодательства международным нормам и стандартам в сфере авиационной безопасности.

Ключевые слова: авиационная безопасность; воздушное судно; гражданская авиация; захват; уголовная ответственность; угон.

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