Evolution of Just Culture in occurrence reporting – a legal/legislative perspective

Seminar on Just Culture in the context of occurrence reporting schemes

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Overview

1. Just Culture – what’s law got to do with it?

2. JC elements in (occurrence reporting) legislation

3. What should be achieved in a new occurrence reporting scheme?

4. Concluding messages
1. JC – what’s *law* got to do with it?

- Culture of justice?
- Culture of fairness?
- Culture of ...?

“Just”
- justice?
- judiciary?
- fair?

“Culture”
shared and accepted beliefs, way of life, art and customs

- Whose justice, fairness?
- Whose shared and accepted beliefs?
1. JC – what’s \textit{law} got to do with it?

"\textbf{Just}\text{" - justice?  
- judiciary?  
- fair?

"\textbf{Culture}\text{" - shared and accepted beliefs, way of life, art and customs

Who does it apply to?

What does it instruct those it applies to?

- Culture of Justice?  
- Culture of fairness?  
- Culture of ...?

Who is/are beneficiaries of such effect?

What (positive) effect to achieve?
1. JC – what’s *law* got to do with it?

» (How) Can JC be legislated (at all)?

» Society elements
» Human behaviour
» Perception
» Conflicting “public good”
» Different Regulators
What is the concrete legal purpose of legislating JC for occurrence reporting?

Perhaps:

......to provide an aviation safety system which encourages a high level of reporting without reporter’s having to fear retributions......
Conceptualising JC

A “Just Culture” is the end-result of the proper and well balanced application of several different elements on all levels and by all actors. Examples:

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2. JC elements in (occurrence reporting) legislation

- Basically implementing relevant provisions of ICAO Annexes and guidance
- Sometimes law, sometimes not....
- National variations, subject to national/domestic law (and cultures)
- Varying level of enforcement

Base line:
- Minimum Annex 13 level
2. JC elements in (occurrence reporting) legislation

Regulation 3922/91 “JAR coat hanger”

- 3922/91 as such did not contain JC-relevant provisions concerning reporting
- Gradually, as more JAR’s were annexed to 3922/91, some JC elements concerning reporting were introduced. Notably EU-OPS contain some such elements.

Base line:
- Reporting scheme with “no blame” – protect identity/source – restricted use/purpose of enhancing safety
- Flight recorders – restricted use/purpose of accident/incident investigation
2. JC elements in (occurrence reporting) legislation

- Article 7 Accident report
- Article 8 Incident report
- Article 10 Safety recommendation

Base-line:
- Accident report: restricted use/purpose (no blame)
- Incident report: protect identity/source
- Safety recommendation: no blame, no liability
2. JC elements in (occurrence reporting) legislation

Reg 1592/2002
“1st EASA Regulation”

- Article 11 Information network (between Commission-EASA-NAAs + dissemination to interested parties)

Base-line:
- NAAs to ensure “appropriate” confidentiality for information received
- Restricted use/purpose (based on what’s needed to improve aviation safety)
- Limited dissemination to privileged group to protect confidentiality
2. JC elements in (occurrence reporting) legislation

  - Article 8 Protection of information
  - Article 9 Voluntary reporting

Base-line:
- Protect identity/source - restricted use/purpose of the objective of the Directive
- No proceedings against reporters in respect of unpremeditated/inadvertent infringements – without prejudice to penal law
- Employees who report incidents shall not be subject to prejudice by employers
- Caveat: no prejudice to national rules related to access to information by judicial authorities
- Voluntary reporting: strict confidentiality and de-identification
2. JC elements in (occurrence reporting) legislation

Reg 216/2008 “2nd EASA Regulation”

- Article 15 Information network (between Commission-EASA-NAAs + dissemination to interested parties)
- Article 16 Protection of the source of information

Base-line:
Art 15
- Essentially same as under 1592/2002

Art 16
- Voluntary provided information = protect identity/source
- No proceedings against reporters in respect of unpremeditated/inadvertent infringements – without prejudice to criminal law + not if gross negligence
- Employees who report incidents shall not be subject to prejudice by employers - without prejudice to criminal law + not if gross negligence
- Caveat: no prejudice to national rules related to access to information by judicial authorities
2. JC elements in (occurrence reporting) legislation

- Article 2 defines JC for the Regulation
- Annex 1 assigns “the minimum level of the measure of the JC” as the 3rd key performance indicator

Base-line:
- No substantive JC (protective) element ...... (which is logical since the purpose of the Regulation is set-up mechanisms to measure the level of JC (elements.....)
2. JC elements in (occurrence reporting) legislation

Reg 996/2010
“Accident investigation”

- Recitals 22-26 E.g. advancement of the principle of Just Culture (24)
- Article 12 Coordination of investigation
- Article 14 Protection of sensitive information
- Article 15 Communication of information
- Article 16 Investigation report
- Article 17 Safety recommendation
- Article 19 Occurrence reporting
- Article 21 Assistance to victims/relatives

Base-line:
- Protect identity/source – restricted use – only for purpose of the Safety investigation resp. discharge of safety related obligations resp. improvement of aviation safety
- Balancing of interests: access for judiciary only if benefits of disclosure outweigh the negative effect disclosure would have on (present or future) safety investigation + interests of victims/relatives reflected
- Protect of personal data; reference to professional secrecy
- Investigation report: no blame/liability; anonymity
- Safety recommendation: no blame/liability
- Controlled cooperation between safety investigation and judicial investigation
Reflections 1:

- The different **elements** I went looking for....

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....do already exist to certain degrees
Reflections 2:

- Several elements of JC already exist in legislation
- Not every element of JC can be covered by EU legislation
- Important to understand how much can be achieved in “hard law” and what we should leave to other measures/processes
Reflections 3:

- JC involves everybody

- JC therefore needs to be addressed ...
  - ... at EU level
  - ... at national level
  - ... at company level
  - ... at individual level
3. What should be achieved in the new Occurrence Reporting Scheme?

- Transpose the JC elements from Directive 2003/42/EC?
- Enhance with what we have in the EASA Regulation and R 996/2010?
- Less? More? Different?
- What do we need (in addition) to make it work?
Even if JC as such may be difficult to legislate, the constituting elements can be legislated

Not all elements can be legislated by the EU legislator = build bridges

Not all elements can/should be legislated at all = think of alternatives to legislation

Several elements of JC already exist in today’s EU legislation = build on this experience

JC involves everybody – at all levels, and is everybody's responsibility; the weakest link will break the chain = involve/inform/educate all

Monitor and Enforce the existing and future system
Thank you for your attention!

Your safety is our mission.

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