

# INVESTIGATION OF AVIATION OCCURRENCES AS SPECIAL PROCEEDINGS IN ASPECT OF DISCIPLINE VIOLATION BY PERSONNEL IN VIEW OF ACT FROM JULY 3, 2002- AVIATION LAW

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The discipline of aviation personnel in civil aviation is shaped by various kinds of norms: criminal, administrative, professional, cultural, national and international. The most radical are, no doubt, criminal norms. Closer analysis of aviation law indicates that discipline can also be affected by aviation occurrence investigations conducted by state committees. Findings of the committee investigating an aviation occurrence may result in the liability of a member of aviation personnel if the findings prove that the cause of the occurrence was a breach of aviation discipline.

**K e y w o r d s:** aviation occurrence, aviation discipline, aviation occurrence investigation, final report

## 1 INTRODUCTION

The issue of aviation accident influence on the safety of civil aviation can be viewed from various perspectives. In the context of national law, particularly imperative is the influence of aviation accident investigations on the discipline of aviation personnel. Thus emerges a problem which is associated with search for answers to the question: To what extent can investigations affect aviation personnel discipline in the light of Polish aviation law? Successful methodological approach to the presented problem required adoption of a thesis based on the assumption that, "influence on aviation personnel discipline is dependent on the final findings of aviation accident investigation committees". An argument for this thesis was the fact that, in any case, positive findings by investigation committees researching reasons for the incident resulted in realization of the axiological aspect, i.e. the creation of a basis for researching effectiveness of the law, its creation, application and impact on social behavior. [2]

## 2 TERMS "AVIATION ACCIDENT" AND ITS "INVESTIGATION".

As adopted at the outset, there was the thesis that "influence on aviation personnel discipline is dependent on the final findings of aviation accident investigation committees", it is essential to clarify the terms: "aviation accident" and "investigation". Their meaning is, in fact, not only important to the understanding of these institutions, but also, as assumed above, to the impact on the discipline of aviation personnel. Thus, according to the wording of Art. 134 Par. 2 of Aviation Law [7], the term "aviation accident" refers to, "occurrences associated with the operation of an aircraft which took place at any time after any person boarded the aircraft with the intention of flight and until all persons on board left the aircraft".

General definition of the term "aviation accident" is further specified by legislature to include circumstances that must occur in conjunction with the general definition of the term indicated.

Firstly, there must be at least one person who has suffered injury resulting in death or serious injury as a

result of: a) being on board the aircraft, b) being in direct contact with any part of the aircraft, including parts which have become detached from the aircraft, c) direct impact of air or gas stream caused by the aircraft. The legislator also included in Art. 134 Par. 2 a limitation: The specified conditions do not apply to cases in which the injury arose from natural causes or as a result of injuries inflicted by the person or other persons, or when the injuries were suffered by those on the flight without permission or hiding in places where access is normally closed to passengers and crew.

Secondly, complementary to the general definition of "aviation accident" may be a damage to the aircraft or damage to its structure resulting in damage to construction durability, technical or flying characteristics of the aircraft, which requires was major repair work or replacement of a damaged part. Statutory exemption of the above may be as a result of the following circumstances: a break in the work of the engine of the aircraft or its damage, if the damage regards the engine only or its cowlings or support units or if the propeller blades were damaged, wing tips, antennas, tires, wheel braking devices, fairings, or if the covering has small dents or punctures.

Thirdly, "aviation accident" refers to a situation in which there was loss of the aircraft and the location of the wreckage has not been established, and canceled was official search, or the aircraft is in a location where access is impossible.[3]

It should be noted that in addition to the term "aviation accident" the legislature uses the term "aviation incident" and "serious aviation incident". In accordance with art. 134 par. 5, aviation incident is an occurrence other than an aviation accident, associated with the operation of an aircraft which affects or could affect its safety. Meanwhile, according to art. 134 par. 6, a "serious aviation incident" is an occurrence where the circumstances of the occurrence indicate that it was almost an aviation accident<sup>1</sup>.

Tied to the term "aviation accident" is the term "aviation accident investigation". Determining its meaning is of no particular difficulty due to the fact that legislature defined it in the Resolution of the Minister of

<sup>1</sup>Further on, the terms "aviation accident", "aviation incident" and "serious aviation incident" will be referred to as "aviation occurrence".

Transport from January 18, 2007 on aviation accidents and incidents. As amended by § 14 of the resolution, investigation of aviation accidents includes: 1) the collection, recording and analysis of all relevant information about the occurrence, taking into account all the factors that are the cause-and-effect relationship, and that could affect its happening, 2) the collection of medical information in the event of fatal injury or serious injury to persons in the accident, 3) development and submission of a initial report, if necessitated by the findings or by summary preventive recommendations, 4) to determine, if it is possible, the reasons and circumstances, including recommendations aimed at preventing similar accidents in the future and general improvement of flight safety, and 5) the development of a final report.

The presented above committee's normative proceeding algorithm in case of aviation accident investigation indicates its complementariness as it covers both the procedural steps and activities associated with the development of the final report which is a synthesis of the committee's activities.

### 3 INVESTIGATION OF AVIATION OCCURRENCE AS "SPECIAL PROCEEDINGS" IN ASPECT OF DISCIPLINE VIOLATION BY PERSONNEL.

In order to clarify the specificity of aviation accident investigation regulations which are *lex specialis* in character with regard to aviation personnel discipline it was, first of all, necessary to answer the question: What is meant by the term "special regulations"?

On the basis of legal doctrine, opinions regarding the term "special proceedings" are generally similar. For instance, T. Nowak is of the opinion that special regulations are, "Proceedings characterized by certain derogations from the ordinary procedure which is the basic legal process".[4] H. Grajewska-Kraczkowska, defined special regulations as, "a simplified procedure which is a de-formalized modification of regular procedure"[1]. Authors T. Grzegorzczuk and A. Gąbiński are of the opinion that special regulations are "proceedings which significantly differ from regular proceedings"[5].

The above presented understanding of the term "special regulations" in view of legal doctrine allows us to conclude that regarding aviation occurrence investigation norms, the regulatory norms in the Resolution of the Minister of Transport from January 18, 2007 on aviation accidents and incidents are *lex specialis* in character with regard to the issue of aviation personnel discipline. They require different proceedings, special, which apply in case of investigation of a specific aviation occurrence. The legal basis of the special nature of proceedings regulation in case of aviation occurrences is expressed in art. 134 par. 1 of Aviation Law which states that, "Committees do not make judgments as to guilt and

responsibility"<sup>2</sup>. Such design of regulation shows how different such proceedings are in contrast to classic proceedings pending before state authorities (e.g., criminal, civil, administrative). The goal of the above mentioned proceedings is to put forward a specific decision (order, judgment, ruling, etc.). Meanwhile, final decisions of aviation occurrence investigative committees generally do not have such character. All the more that the consequence of the wording quoted entitles us to express the view that committee members are legally banned from formulating opinions on guilt and responsibility, even in cases where the circumstances of aviation occurrence investigation indicate that it occurred as a result of discipline breach by personnel. In addition, committee members are not authorized to request imposition of disciplinary sanctions on such personnel or make any disciplinary judgments.

### 4 INFLUENCE OF AVIATION ACCIDENTS INVESTIGATIONS ON STRENGTHENING AVIATION PERSONNEL DISCIPLINE

#### *Final report by aviation accident investigation committee*

To address the issue of impact of aviation accident investigations on discipline of aviation personnel it is necessary to once again refer to Art. 134 Par. 1 of the Aviation Law. First of all, it is questionable since, "Committees do not make judgments as to guilt and responsibility", then the issue of committee investigation with regard to aviation personnel discipline seems to be a matter of merely academic nature. It appears, however, that the opposite point of view may imply the answer to the basic question as to when aviation occurrence investigation influences aviation personnel discipline. More specifically, the issue is whether the final report is constructive or declarative. The answer to this question will determine of what character is the influence of such investigations on the discipline of aviation crew.

Based on Art. 134 Par. 1 of the Aviation Law, it can be understood that final reports are declarative in character regarding disciplinary matters. This conclusion is primarily based on literal interpretation of aviation law regulation which reads as follows, "Committees do not make judgments as to guilt and responsibility". The thesis about declarative nature of reports can also be inferred from Art. 138 Par. 1 of the Aviation Law quoted *in extenso*, "After examination, the committee shall draw up a final report and adopt a resolution in this regard". Doubts, however, as to the declarative nature of the final report result from the provisions in par. 3 cited at the beginning of the article. As it stands, the minister responsible for transport shall hand over the final report

<sup>2</sup> Similar in wording is art. 15 par. 1 EP and EU Council Resolution No. 996/2010, October 20, 2010 on investigation of accidents and incidents in civil aviation, their prevention, repealing directive 94/56/WE (Dz.U.UE.L.2010.295.35).

within 14 days, including “a resolution in order to analyze and take appropriate actions, i.e. by carrying out preventive recommendations and taking necessary actions according to precautionary guidelines”. Interpretation of regulation leads to reading standards contained therein in such a way that the final report is constructive in character, if its content includes explicit action recommendations addressed to specific recipients (e.g., pilots, air traffic controllers, maintenance personnel, etc.).

The above cited regulation of the Aviation Law leads us to the conclusion that legal nature of the final report may be different depending on the evidence obtained. At times, it will be declarative in character, if it confirms factors affecting the aviation occurrence (such as meteorological phenomena, collision with a bird, etc.). At other times, it will be constructive (e.g. if the investigation proves that the cause of the occurrence was conscious breach of discipline by a member personnel such as a pilot, air traffic controller, mechanic, etc.). Such justification of conclusion is possible to uphold provided that such a differentiation regarding constructive or declarative nature in a material sense is possible based on findings contained in the final report of the committee investigating an aviation occurrence.

#### *Accountability regarding breach of aviation discipline*

The above findings clearly show the relations between final committee findings and discipline of aviation personnel. Especially, if the committee determines that the aviation occurrence was caused as a result of breach of order or ban by personnel member as defined by aviation law. In this case, aviation accident investigation committee findings contained in the final report provide the original evidence of liability of accident perpetrators. Specifically, it means criminal<sup>3</sup>, civil or administrative liability, if the wording in the final report can be correlated to legal standards.

The concept of possibility of accountability of aviation personnel based on investigative committee findings is stated in art. 135 sec 6 of Aviation Law, “The committee may withdraw from investigation into aviation accident or incident, at the same time informing the competent authorities of suspected criminal infringement if it is determined that the person using the aircraft was under the influence of alcohol or drugs”. Construction of this regulation indicates that a prerequisite to fulfill provisions of art.135 par. 6 must be prior findings of the investigative committee that serious breaches of discipline by personnel member took place. Similar in character is art. 134 par. 1 of aviation law in which legislature allows the possibility of sharing investigation results of aviation accidents and incidents collected during investigation of aviation event for the purposes of preliminary proceedings, judicial or judicial and administrative, with

court consent. It includes 1) opinions obtained during investigation, 2) statements obtained from persons during investigation, 3) correspondence between those in connection with aircraft operation, 4) medical or private information regarding persons involved in the aviation accident or incident, 5) on-board speech recordings, air traffic control recordings and their copies, 6) opinions expressed during analysis of information, including on-board records. Transfer of investigation results as delineated in art. 134 par.1 to other organs carrying out investigation regarding an aviation occurrence is based ‘providing help’ in order to, among others, hold accountable those who contributed to the occurrence of the aviation event (e.g. in legal proceedings, judicial-administrative, administrative or in connection with activities related to liquidation of damages - art. 134 par. 1e).

As can be seen, providing evidence by investigative committees to other authorities which are also conducting investigation regarding an occurrence can also affect personnel discipline because of the possibility of aviation staff accountability, if proven is aviation discipline violation.

#### *Disclosure of occurrence circumstances*

Impact of accident investigation on strengthening aviation personnel discipline results from legislative order of disclosure of the occurred aviation events. Proof of this order is art. 135a par. 1 of Aviation Law which includes an explicit order to disclose information regarding a break in the work, defect, damage to the aircraft or its component or other circumstances that did or could affect flight safety. This obligation is effective regarding a number of entities: 1) user or commander of the aircraft, 2) entrepreneur involved in the design, manufacture, maintenance or modification of aircraft, 3) person signing flight capability and documents related to inspections of aircraft, 4) institutions ensuring air navigation services; 5) airport management, 6) entities performing ground services, 7) persons connected with the installation, modification, maintenance, repair, overhaul, flight-checking or inspection of air navigation installations, for which safety responsible are aviation supervision authorities.

In accordance with statutory requirement of art. 135a par. 1a, reporting on aviation events should be made using any means of communication immediately after the occurrence of the event and no later than 72 hours after its occurrence. Article § 2 item 1 of resolution on aviation accidents and incidents requires that the report contains the following components: 1) the date and time of the occurrence, 2) place of the occurrence, 3) the type and model of aircraft, 4) a description of the occurrence.

It is characteristic that, according to art. 135b par. 1, the information about occurrence of aviation events is transferred as part of a mandatory reporting system and filed by the Chairman of Civil Aviation Bureau in a data base. This information can be used by, aside from the Chairman and the committee, other EU and EC member

<sup>3</sup> See also.: art. 173. § 1, art. 174. § 1, art. 177. § 1, art. 178a, communication offences, act from June 6, 1997. Criminal law (Dz. U., 1997, Nr 88, pos. 553); And art. 361 § 1, Art. 362, Art. 363 § 1 act from April 23, 1964. (Dz.U.64.16.93 t.j.); art. 100 act from July 3, 2002.

countries as entities participating in the exchange of information on flight safety.

From a legal point of view, resulting from reporting an aviation occurrence is 1) classification of the occurrence as: accident, serious incident or incident, 2) immediate notification of Chairman of Civil Aviation Bureau, 3) committee investigation, provided that the aircraft was listed in the national register of civil aircraft.

From aviation personnel point of view, the legal obligation to disclose the occurrence of aviation events, as delineated in art. 135a par. 1a can be considered legitimate. Practically speaking, the relation between disclosure of the occurrence and aviation staff discipline is due to the fact that an aviation occurrence caused by breach of discipline by aviation personnel is one of the social relations that occur between individuals (e.g. aircraft crew and passengers, aircraft crew and air traffic control staff, or aircraft crew and technical staff supporting the aircraft, etc.). Upon the occurrence of an incident, there may arise conflicting interests between parties, which can be a reason for event perpetrators to behave in a way as to hide the actual circumstances of the incident. The disclosure, however, of aviation occurrence circumstances as well as its investigation by a state committee guarantee that factual circumstances of the occurrence which put civil aviation safety at risk will be determined and disclosed. In addition, investigation findings may lead to the development of preventive recommendations. Regardless, disclosure of circumstances indicating that the cause of the aviation occurrence was breach of discipline by aviation personnel member may result in the fact that the person guilty of a disciplinary aviation offence will bear responsibility in this regard before the competent authorities.

## 5 CONCLUSION

To conclude this discussion it is in order to address the question posed at the onset of this article: To what extent do investigations of aviation occurrences affect aviation personnel discipline? Assessment of aviation occurrence investigations based on aviation law lead us to a general conclusion that aviation occurrence investigation as well as committee findings do have a significant influence on aviation personnel discipline. Regardless of the general conclusion, at the same time the following opinions need to be expressed:

1. Aviation law regulations regarding investigation of aviation occurrences lead to the conclusion that they are positive from the point of view of aviation personnel discipline. The way in which regulation was constructed allows us to view the issue of safety in civil aviation from a somewhat wider

perspective that is through the impact of final committee findings on personnel regarding aviation discipline. This position seems to be true due to the fact that the issue of civil aviation safety must be carried out in many ways. The reason is that safety in civil aviation is perceived as a multi faceted phenomenon. Outlining the overall picture requires integration of knowledge from different disciplines.

2. The problem of civil aviation safety certainly does not disappear with the introduction of a number of legislative solutions. It should be noted that aviation safety conditions are dependent, as mentioned above, on various factors. Without doubt, these include activities related to air traffic management, aviation personnel qualifications and quality of aircraft maintenance. Extremely important, however, is the human factor in the form of disciplined aviation staff action. It should also be noted that even the best legislative, organizational and technical solutions not solve the issue of aviation safety if the established normative solutions and the resulting procedures are not followed by aviation personnel.

3. Procedural solutions regarding committee activities in connection with the completion of aviation occurrence investigation in the context of aviation personnel discipline should be considered effective due to committee obligation to prepare final reports containing findings on the occurrence. This part of normative solutions does not raise any doubt. Noted, however, should be one other circumstance. From wording of § 16 pt. 2 of the resolution it appears that it regards not only investigation of accidents and incidents in civil aviation but their prevention. Against this background, it is apparent that resolution regulations are too meager and insufficient in terms of prevention. There is, first of all, lack of further regulatory solutions which would contain legislative wording specifying the term “preventive recommendations”. For this reason, it seems that *de lege ferenda* it should be indicated, at least based on example, what these preventive recommendations could be, to whom they should be addressed and what is their legal validity.

4. The conclusions made allow us to state that investigations into aviation incidents are preventive in character regarding aviation personnel. This is determined by the fact that the occurred event is disclosed, its circumstances are investigated by a state committee and their findings are made public in the form of a final report. If, then, human error or deliberate action of a member of aviation personnel is the cause, then making this information public, regardless of other legal consequences, must put additional pressure on aviation staff to follow disciplinary orders. This will aid in increasing civil aviation safety within range of aviation personnel activity. *Pro futuro*, it should be added that as long as the issue of aviation safety permeates into modern society life, justified will be the need for its multilevel and scientific analysis.

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