

Summaries

Justitiële verkenningen (Judicial explorations) is published nine times a year by the Research and Documentation Centre of the Dutch Ministry of Justice in cooperation with Boom Juridische uitgevers. Each issue focuses on a central theme related to judicial policy. The section Summaries contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (nr. 5, 2007) is *Airspace safety*.

Criminal law enforcement in airspace

P.A.M. Verrest and J.A.C. Bevers

As is the case on land and on the high seas, in airspace a large variety of criminal offences may be committed; they may be offences in and on board aircraft as well as offences against or with the use of them. The exceptional circumstances of air transportation, where international borders are crossed at very high speed, in a practically isolated and relatively fragile vessel, do however lead to a situation which, from the primarily land-oriented perspective of criminal law enforcement, leads to an absolutely unique situation. As an illustration of this, the authors of this article briefly introduce a number of recent incidents in which the Dutch authorities were confronted with questions of criminal law enforcement related to aircraft. On the basis of these examples, they provide a short, general overview of the applicable legal framework, in which they sketch the background and role of some international instruments (Conventions of Chicago, Tokyo, The Hague and Montréal), as well of some relevant national provisions of criminal law and procedure.

Civil aviation and terrorist incidents; past developments, future trends

R.P. Bron and D. de Hoog

This article mirrors a set of theoretical notions from the field of terrorism studies to the historical development of terrorist actions targeting civil aviation. Authors explore the applicability of both the notion of historical phases of terrorism as well as notions from the continuity-discontinuity debate – popularly known as the ‘old versus new’ debate – based upon longitudinal patterns of terrorist incidents aimed at civil aviation. Though the empirical evidence

needs to be treated with precaution, it is shown that there are some striking parallels between historical phases of terrorism and the historical development of terrorist actions directed to civil aviation. Moreover, it is argued that contemporary terrorism aimed at civil aviation has certain 'new' features – next to enduring 'older' ones. It is also argued that aviation security has had profound effects on the decline of attacks directed towards civil aviation.

Access to a secure airspace; security at airports

W.C.J.M. van Dijk

This article concentrates on the relationship between the security measures at airports and a secure airspace. The first part focusses on the initial process of security at Dutch airports in 1970. The second part describes the changes in policymaking due to the ongoing threat against civil aviation, which finally leads, as described in the 3th part, to the introduction of the European Commission as a new and important player in the field of civil aviation security. The leitmotiv is there's no getting away from security measures in civil aviation. This does not mean, however, that authorities and industry are relieved from the task to review the security measures frequently in the light of technical developments, operational implications and the impact on passengers.

The development of a transatlantic aviation relationship in the period 1992-2007

P. Mendes de Leon and M. Gurvits

This article discusses the transatlantic relationship in the context of the deregulation of air traffic services in the US and EC. Special attention is paid to the gradual liberalisation of bilateral agreements between the US and selected EC Member States, notably the Netherlands. The US and the Netherlands concluded the first *Open Skies* agreement in 1992, building upon arrangements made in the preceding decades. Airlines have greatly benefited from *Open Skies* regimes. An important example is the cooperation between KLM and Northwest. Other examples followed in the 1990s. The relationship between the US and EC is based upon a common understanding at large regarding the operation of air transport services. A market oriented approach coupled with the imposition of competition regulations is shared by the two jurisdictions. However, a number of differences exist. The EC wishes to move forward with further

liberalisation in the economic field by demanding more investment opportunities, further relaxation of traffic rights and the right of establishment for its airlines, whereas the US maintains a rather protectionist stance towards these proposals. More importantly, whereas the US emphasises national security, the EC places the protection of human rights and the environment high on its policy agenda. These different stances create the need for further negotiations and the conclusion of more transatlantic arrangements in order to enhance a smooth operation of air services.

Reporting incidents in aviation within a 'just culture'

R.M. Schnitker

In the aviation sector much energy is put in finding out what caused an unsafe situation and an accident in order to improve the safety system and, if necessary, to be able to sharpen safety regulations. Aside from an inquiry on safety a judicial investigation related to the question of guilt of persons can also be put into action. Increasing interest of the Aviation Police and the Public Prosecutor in all these matters in commercial aviation, causes resentment in this sector. Punishing persons in aviation leads to a decreasing willingness to report unsafe situations. This of course doesn't mean that the judicial system may not or should not deal with aviation. A climate of safety means an atmosphere of trust in which people are encouraged (even rewarded) for providing essential safety-related information, but in which they are also clear about where the line must be drawn between acceptable and unacceptable behaviour. That's the basis for a 'just culture'.

Dilemmas of an airplane captain

B. Baksteen

Society can not be made safe by rules and laws. Accidents happen in the gap between the virtual world of the thinkers and the real world of the actors. In the real world safety can never be the number one priority and in the real world things break down and mistakes are made. The gap can be papered over by rules but not bridged. The inevitable accident will generate surprise, outrage and more rules. Yet safety is attainable, as airline transport shows. But this process is driven by factors intrinsic to aviation, which hampers transposition to other activities. Still, it is worth a try. The result would be a process based on a set of experience based bottom-up rules, applied

if and when beneficial by skilled and informed actors bearing full responsibility for the process. Their adage would not be 'rules are rules', but rather 'rules are tools'.

Space junk and space law

F. von der Dunk

'Space junk' is rapidly becoming a major problem. The problem is approached from the legal angle in various ways, none of which however in itself sufficient to solve the problem. Firstly, the liability regime for damage caused by space objects can be applied to damage caused by space junk; secondly, enhancing the regime for registering space objects can maximize the possibility to actually identify (a) liable state(s); thirdly, mechanisms such as an international compensation fund can be devised to deal with such cases; and fourthly measures are gradually being introduced to try and minimise the creation of new space junk. In the last resort, however, the problem is one of political will and a resulting willingness to spend money on mitigating the problems. Since a tendency towards growing acceptance of the gravity of the problem may be discerned, there is hope that this will indeed be possibly brought about in the not too distant future.