International Journal of Engineering & Technology, 7 (3) (2018) 1858-1860

International Journal of Engineering & Technology

Website: www.sciencepubco.com/index.php/IJET
doi: 10.14419/ijet.v7i3.16229
Research paper



Organizational and legal attributes of subjects of the authorities in the field of civil aviation of Ukraine

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Abstract

In this paper, a concept and attributes of subjects of the authorities in the field of civil aviation have been defined. It has been determined that public authorities are a complex, dynamical, hierarchically constructed, multifunctional system of a state-legal nature. Aviation safety is an integral attribute of this system. The classification of aviation transportation subjects according to the legislation of the United States of America and the standards of the International Civil Aviation Organization has been given. The methods of system analysis, formally-juridical and a method of classification have been used. It has been suggested to improve the Air legislation of Ukraine in accordance with the ICAO requirements.

Keywords: *Civil Aviation; Subjects of the Authorities; Legal Attributes; Implementation; Aviation Rules; Legal Status*

1. Introduction

The peculiarity of the field of civil aviation is determined by the dominant mission of the authorities, namely, by the aviation safety. Subjects of authority who are related to civil aviation, process the procedures and activities that concern not only the employees of the State Aviation Service, but also the crew of the airlines and airports and other enterprises of the industry, namely: training centers, handling companies, board catering factories, aircraft repair factories, aviation technical bases and fuel and refueling complexes, and others.

The consideration of the subjects the authorities in civil aviation as a system education remains a topical issue, which requires targeted scientific support, an integral component of which is the scientific research of all its sides. Unfortunately, since the proclamation of Ukrainian independence there were no such studies in the administrative-legal area.

Nowadays, the consideration of the subjects of the authorities in civil aviation as a system is still topical, that requires targeted scientific support, an initial component of which is the scientific research of all its parts. Unfortunately, there were no such researches, since the proclamation of the independence of Ukraine in the administrative-legal space.

For the solution of this established tasks, was taken the theoretical basis, works of scientists who work with administrative law, namely: V. Averyanov, D. Bahrah, I. Bychila, A. Berlach, Y. Bityak, I. Borodyn, I. Golosnychenko, G. Zabarn, B. Lazarev, R. Kalyuzhnyj, S. Kival, T. Kolomoyets, V. Kolpakov, O. Kuzmenko, V. Schools and other prominent scients in the area of administrative law.

Issues about the activity of the Ministry of Infrastructure, State Aviation Service of Ukraine and determination of their legal status, were described in the scientific researchess of such Ukrainian scientists, namely: D. Bezzubov, A. Bychkov, V. Havlovsk, S. Goncharuk, O. Gusar, N. Daraganov, O. Dudnik, Y. Pyvovar, Y. Yerashov, G. Zabarny, O. Zolotar, I. Kozachok, V. Ryzhyi, A. Sobakar, I. Sopilko, S. Stetsenko.

The aim of the study is to find out the integrative features that unite the subjects of the authority in the educational system in civil aviation. The main objective of a study is to emphases the following tasks: a) to define the concept and content of the legal status of subjects of power in civil aviation; b) to carry out the classification of subjects of the authority in civil aviation; c) to investigate the legal support of the activity of subjects of the authorities in civil aviation and to characterize the directions of their activity.

2. Concept and function of subject of the authorities

Ensuring of the high economic efficiency and safety of air transportation and aviation operations leads the creation of a proper administrative and legal organization of civil aviation. The achievement of the socially important tasks according to the civil aviation is carried out through the power and organization of the activities of a body, the content of which is the implementation of state programs in civil aviation, where the law acts as a mean streamlining and standardization of regulations.

Public administration is carried out under the guidance and control of representative organs of state power, organizing the activities of these organs is imperious and subordinate, namely, it is carried out in strict accordance with the law and within the limits of the established competence. In the process of the activity of executive and regulatory organs the acts of public administration of state power are issued.

To definition the "subject of the authorities" is held in Article 2 of the CAPU [1], which should be understood as a body of state power, a local self-government body, their official, another entity in the exercise of their power of government functions on the basis of legislation, including the implementation of delegated authorities.

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However, not only state organs, their officials can be the entities of the authority, but also enterprises, institutions and organizations, and even individuals, if they are delegated by certain power (for example, the registration and authorization functions of the State Aviation Service, the functions of attraction to administrative liability, etc.).
The power of administrative functions, which are carried out on the basis of legislation, in particular for the implementation of delegated authority, should be understood as any authority within the framework of state or local governmental activities that don`t belong to the legislative powers or powers of administer justice.
We can distinguish, in particular, the following groups of authorities' management functions: 1) elaboration (formation) of the policy; 2) legal regulation; 3) provision of administrative services; 4) supervision and control.
Delegation of the authorities may be defined as the giving of one's authority of another entity to one's authority (empowerment). One can distinguish the following features of delegated authority (so far only on the doctrinal level): 1) delegation of the authority is impossible without the appropriate legislative basis; 2) delegation of the authority consists of the prior permission of the subject of the authority to another entity (this may be an enterprise, institution, organization) to exercise the powers attributed to the competence of the first one; 3) only individual powers may be delegated, with the extension of the powers of the entity to whom they are delegated; 4) delegation of the authority is possible on a certain period of time or without any indication of a term.

3. Normative and legal ensuring of the subjects of the authority in the field of civil aviation

Activities of the subjects of the authority in civil aviation is regulated by the numerous normative and legal acts. Yes, the Air Code of Ukraine [2] at the Art. 11 stipulates that the regulation of civil aviation is carried out by means of the adoption in accordance to the established procedure of regulations and adoption by the authorized organ of civil aviation matters (State Aviation Service of Ukraine), of aviation rules of Ukraine that regulate the activity of civil aviation and usage of airspace of Ukraine. Since the accession of our state to the Chicago Convention in 1992, more than five hundred regulatory acts have been adopted in the field of civil aviation, the overwhelming majority of which, has aviation rules.
Regulatory provision of the subjects of the authority in civil aviation is carried out by means of the adoption in accordance with the established procedure of the legal acts and adoption by the authorized body on civil aviation matters (State Aviation Service of Ukraine) of the aviation rules of Ukraine that regulate the activity of civil aviation and use of airspace of Ukraine. The sources of the receipt of regulatory and legislative acts for the organization are: the authorities of Ukraine (the President, the Verkhovna Rada, the Cabinet of Ministers of Ukraine, the Ministry of Infrastructure, etc.), which adopt the relevant regulatory and legislative acts; information systems "League: Law", "Rada"[3].
To the International normative and legal acts we can relate: 1) The Convention on International Civil Aviation Organization and Annexes (19) to the Convention; 2) ICAO Standards; ICAO Recommended Practices; Any Requirement for Physical Characteristics, Configuration, Material Parts, Specifications, Staff and Rules, the only use of which is deemed necessary for the safety or regularity of the international air navigation and which the Contracting States shall comply with in accordance with the Convention; 3) ICAO Circulars; 4) ICAO Guides and Working Papers; 5) International Conventions, Agreements, Protocols; 6) Reports of the Assembly and Conferences of ICAO.

4. System of subjects of the authorities in the field of civil aviation

Subjects of the authority in the field of civil aviation represent an econometric system, the components of which interact on the material, informational and financial levels, implementing the processes of the management and production that ensure the functioning of this system. It is represented as a very complex human system consisting of a set of components interconnected functionally and interacting in the process of providing flights, ground operation and repairing of an aircraft, training of service personnel, with a very complex structure of internal and external communications. The integrity of a quality between all subsystems of the system of subjects of the authority in the field of civil aviation and the complex indicator of the functioning of all civil aviation is the safety of aviation in general.
The State, in accordance to a given functional approach to aviation security, designs an appropriate structure of the system of subjects of the authority in the field of civil aviation in such a way that they can effectively carry out their functions and don`t damage the air transport system and the population in whose interests it develops. The formation of the structure of these entities in Ukraine depends on the systemic interaction of the Ministry of Infrastructure with other governmental bodies and public structures to build constructive relations at all levels in the field of civil aviation.
The structural elements directly affect the construction of the system of the authorities in the field of civil aviation; it feels like an external image, the shape of the scheme. The addition of one element affects the previous status of others, makes changes in the functional relationships between them, so the elements of the system each time must be regulated, taking into an account the relations in which they are with each other. The system of the subjects of the authority in the field of civil aviation is characterized not only by the presence of definite links between its elements, but also by the interaction with the environment with which it manifests its integrity.
External objects in relation to the system are those objects of the environment, whose integrative qualities are not directly, but indirectly affect the system through its individual components or the system in general. The circumstance for the system of the authorities of civil aviation is the single aviation-transport system in which it operates. It is a complex, branched system, the main purpose of which is to meet the needs of citizens and the economy in the provision of services for the implementation of air transportation and the implementation of aviation works.
For a system of subjects of power in the field of civil aviation is characterized by an extensive network of external and internal communications. They provide: the transfer of control and communication information between the organs of the system of the Ministry of Infrastructure of Ukraine (State Aviation Service of Ukraine) on the one hand, and the higher authorities of the state - on the other one; mutual informational exchange between the crew of the civil aviation and other departments and public organizations; transfer of the control and communication information between the control units and corresponding systems; circulation of the information of the specified nature between the management of the body and other management links; exchanging of the information between the head offices and the management departments of service agencies; the circulation of the information between the head offices and departments - service departments and their subunits at lower levels.
Such a property of constructing of the system as hierarchy and structuring also affects the properties of its behavior of individual elements, and the integral functioning of the system itself is the result of the interaction of all its components at different levels.
The organizing nature of the activity of the authorities in the field of civil aviation, as a system-creating factor, manifests itself in three directions. The first is the practical realization and implementation of aviation safety throughout the territory of Ukraine. The second - leadership, coordination and control of the parent

bodies for the activities of the lower ones. The third is the management of its own apparatus, as each of the subjects in the system of subjects of the authorities in the field of civil aviation has its typical structure, and functional units, which concentrate on the implementation of tasks and the implementation of the functions that face them. Activities of the subjects of the authority in the field of civil aviation is also characterized by subordination, directness and efficiency in solving problems. In the process of carrying out its activities, the subjects of the authority in the field of civil aviation use the norms of national and international air laws.

So, the system of subjects of the authorities in the field of civil aviation has all the basic properties of large social systems. It represents a complex, dynamically developing, and hierarchically built, multifunctional system of state-legal nature, which performs a set of tasks for the safety of civil aviation.

An analysis of the functions of each professional group shows that they are, to a greater or lesser extent, implemented in order to ensure flight safety. At the same time, we consider it possible to divide them into functions: a) directly and directly provide safety of flights; and b) indirectly provide flight safety [4].

In scientific works of O. Husar [5] we encounter the classification of civil aviation personnel:

Depending on the flight or on the ground, a person of civil aviation personnel carries out his professional duties:

a) Civil Aviation Flight Personnel - all persons whose list is specified in the flight documentation and authorized by the operator to complete the flight task;
b) Ground personnel of civil aviation - persons carrying out aviation activity on the ground: 1) employees of the State Aviation Service of Ukraine; 2) employees of airlines (operators); 3) airport workers; 4) aerodrome workers; 5) employees of maintenance and repair companies; 6) State Aviation Supervisors; 7) employees of educational institutions; 8) employees of the companies producing aviation equipment in Ukraine; 9) employees of the National Bureau of Investigation of Aviation Events and Incidents with Civil Aircraft; 10) employees of the Ukrainian State Design, Technological and Research Institute of Civil Aviation. 11) Employees of the State Air Traffic Service Service of Ukraine [6].

By the analyzing existing regulatory acts, there are certain conflicts in the issues of differentiation of air carriers and their authorities. For example, in the Air Code of Ukraine, the concept of aviation personnel is defined as: "aviation personnel - people who have undergone special training, have the appropriate certificate and carry out flight operations, maintenance of aircraft, air traffic management, technical operation of ground communications, navigation, and observation". In turn, in the provisions of the Chicago Convention, a slightly delineated concept is based on the division of powers and certain categories. For example, ICAO aviation personnel are distinguished and have three definitions:

- "Crew member" means the person who is assigned the responsibilities of the owner of the company during the flight of the aircraft;
- A member of the air crew is a person who is burdened with the duties assigned to it by the owner of the enterprise, which is related to the management and operation for the successful flight of the aircraft;- A cabin crew member is a person who carries out his activities for the safety of passengers, which is burdened with duties declared by the controller or commander of the aircraft, but the duties of these persons cannot be intertwined with the duties of the members of the air crew [8].

We need to admit that in the national legislation of certain countries can also follow certain peculiarities precisely with the terminology of this notion. For example, in the legislation of the United States, the Code of Federal Regulations provides two definitions, such as:

- A crewmember is a person who is burdened with duties in an aircraft during the flight;
- Aircraft crewmember is a pilot, air engineer and dispatcher [7].

European Aviation Safety Agency defines that 'cabin crew member' means an appropriately qualified crew member, other than a flight crew or technical crew member, who is assigned by an operator to perform duties related to the safety of passengers and flight during operations [8].

5. Conclusion

According to abovementioned, we can conclude that there are various definitions for the aviation personnel to be differentiated, which are more specific and complete in comparison with domestic ones. That is why we propose to make some changes to the Air Code of Ukraine for more complete and exhaustive definition of this issue, applying the rules of international law. We are invited to take as a basis the very provisions of the ICAO, because, in our opinion, this interpretation is precisely and thoroughly accurate for implementation in national legislation. These decisions will help to shift the emphasis in civil aviation from the commercialization of the industry to the declaration of the safety and comfort of the passenger as the most important value, which is important for a democratic society [9].

In conclusion, the classification of subjects of the authority in the field of civil aviation is based on the identification of signs, which reflect their common features and specific features as a class. Taking into account this criterion the following classes can be distinguished as: individual (pilot, flight engineer, air traffic controller) and collective (crew, airline) of the subjects of civil aviation.

Acknowledgement

This work was supported in part by Department of Constitutional and Administrative Law research work is state budget theme «Public and legal mechanism of guaranteeing Ukraine's national interests» No. 55/13.01.02.

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