

Shooting down a hijacked civilian aircraft - criminal law dimensions of the human right to life. Comments on a judicial decision of the German Federal Constitutional Court of 15. 2. 2006 (BVerfG, 1 BvR 357/(5))

Damjan Korošec, LL.D., Assistant Professor, Faculty of Law, Poljanski nasip 2, 1000 Ljubljana, Slovenia

The author first briefly presents a judicial decision of the Constitutional Court of the German Federal Republic of 15.2.2006 (BVerfG, 1 BvR 357/05) and the incompatibility of the legal regulation of conditions for shooting down a hijacked civilian aircraft with the German Constitution. He then continues with an analysis of the criminal law dimensions of this offence, based on the regulation of this issue in Slovene criminal law.

By a short analysis of the Slovene general concept of criminal offence and its constitutive elements (meeting the conditions for the existence of a criminal offence - in German Tatbestandsmaessigkeit, unlawfulness and culpability) and by highlighting differences between the exclusion of unlawfulness of conduct and its consequences on the one hand, and the exclusion of the perpetrator's culpability on the other, the author criticizes the lack of an institution of excusable necessity (necessity which excludes culpability) in Slovene criminal law. For the author, the case of shooting down a hijacked aircraft with innocent passengers on board, is an excellent textbook example for illustrating the lack of such a criminal law institution. In the continuation of the paper, he argues against the introduction or the application of the institution of the so-called law of free space also for all other cases of shooting down a hijacked aircraft.

By the arguments of the doctrine of the injured party's consent, such as developed in contemporary German substantive criminal law, the author rejects a justifiable and excusable character of consent and presumed consent of kidnapped passengers on board, as an act of participation or accomplishment, related to shooting down (which, in the nature of things, is fatal for all the people in the aircraft). He argues against the institution of consent and presumed consent of the injured party for such encroachments on the most important legal goods as marginal from the aspect of criminal law.

The paper concludes with analysis of shooting down a hijacked civilian aircraft on the order of a superior and certain other related fundamental legal issues, including the question of mistake of law made by a subordinate in connection with shooting down an aircraft.

Key words: judicial decision of the Constitutional Court of the German Federal Republic, shooting down a hijacked aircraft, criminal offence, justifications and excuses, necessity, consent of the injured party, acts on the order of a superior

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