



LEGAL ASPECTS OF AIRCRAFT HIJACKING

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Abstract:

The aim of this article is to discuss and examine the legal dimension of aircraft hijacking crime from international agreements and Turkish legal system aspect. The fact that there are gaps in security procedures of countries and the punishments not being deterrent in aircraft hijacking acts; affect many people, regions, and countries. Increasing terrorist acts in the last years; acts like aircraft hijacking by terrorist groups make it necessary to review universal rules, penal sanctions, and security procedures. This study mentions the problems created by the association of aircraft hijacking crime with political events. As a solution, it suggests imposing sanctions on countries that make this association and making it compulsory to have police in planes.

Keywords:

Aircraft Hijacking, Turkish Judicial System

1. Introduction

Use of aircraft, which is one of the most important tools for transportation, brings some problems along as the number of people using it increases. When we consider the route of an aircraft, since it goes over many countries, it creates situations that may concern many countries if there is any crime. Aircraft hijacking crime creates situations that may harm other countries if the lives and properties of passengers and crew in the plane are harmed in an accident. This study examines aircraft hijacking crime, aircraft hijacking examples, reasons and risks that cause aircraft hijacking, reasons identified as political, and the effects of aircraft hijacking deeds. The regulation of aircraft hijacking crime in international agreements, the legal dimension of aircraft hijacking crime in Turkish Judicial System, and its relation to political events are examined.

Aircraft hijacking is derived from "Hi jack" in English. The reason it is named so is that in one of the recorded airplane crashes the pirate went into the cockpit greeted the pilot with "Hi" and the pilot's name (jack). So, it became "Hi Jack!". If we describe the aircraft hijacking crime with another statement; it is forcing the plane to go in other directions, and causing other problems by going into the air space of another country without a permit, and committing acts to hinder passengers and to rob by threatening the crew using force and threats or other illegal acts. Even though it is different than air piracy definition, all acts that will remove the authority of current crew can be explained with aircraft hijacking act (Uyar, 2009).

2. Aircraft Hijacking Samples

"21 February 1931, first recorded aircraft hijacking act: Captain Byron Rickards, the Pilot that experienced the first hijacking in the world; after landing his Panagra Ford type plane with three engines were surrounded with armed military. The soldiers told the pilot that the plane was confiscated for the revolution. Another aircraft hijacking act happened on 6 July 1948; a seaplane was hijacked in a robbery attempt, and then the plane crashed into River Pearl. 26 passengers and four crewmembers died in the crash. The only survivor was the air pirate. Aircraft hijacking attempt by the youngest person was recorded on 10 November 1969. A plane belonging to Delta Airlines was

hijacked by 14-year-old David Booth in Chicago. On 24 November 1971 another interesting aircraft hijacking act happened. Boeing 727 type plane belonging to Northwest Orient Airlines was hijacked by air pirate D.B. Cooper. After the plane took off, D.B. Cooper jumped out of the plane with a parachute with the 200.000 dollars he stole, disappeared and was never caught. This event was recorded as the most mysterious robbery and aircraft hijacking event in American history. To date, D.B. Cooper is the only air pirate not caught by FBI. After this event, a system was developed to prevent the opening of plane doors in flight, and this system was named Cooper Vane. After this incident, they started to search all passengers and their luggage in America. In our country, the first aircraft hijacking event happened on May 1972. DC-9 Boğaziçi plane belonging to THY on İstanbul-Ankara trip was hijacked by 4 Turkish pirates. Their goal was to stop the execution of their friend (Wikipedia). "

The most interesting aircraft hijacking incident recorded in Turkish aviation happened on 29 October 1998, On the 75th anniversary of the proclamation of the Republic. Adana-Ankara plane of WHY with flight number 487 was hijacked a short time after it took off from Adana at 19:45 by a passenger who was a PKK (Kurdistan Workers' Party) sympathizer. There were 34 passengers and six crewmembers on the plane. The terrorist wanted to go to the place the agreement that ensured the foundation of the Republic 75 years ago, to Lausanne (Switzerland), to protest the foundation of the Republic of Turkey. The pilot convinced the terrorist that it was impossible to fly to that distance, they had to land in Sofia (Bulgaria) to fuel up. However, the pilot filled the time by drawing large circles when they arrived above Ankara and landed in Esenboğa Airport as if he was landing in Sofia Square. It was 22.00. Authorities immediately launched the Crisis Center and started negotiations with the terrorist. The police informed nearby mosques, they asked them not to recite the azan for morning prayers to prevent the terrorist from being suspicious. The terrorist was saying that he would make the grenade on him explode if security forces make a move on the plane. Meanwhile, the cockpit was silent, and he was not interested in the passengers. Negotiators were talking in English as they were pretending to be Bulgarians. Negotiations continued through the night, but they yielded no results. Thereupon, at 04:35 in the morning, Special Forces Units made operations in the plane. The police got in from the rear door; After they evacuated some of the passengers, they shot and killed the terrorist in the cockpit. There was no other loss of lives or injuries in the incident. A 7,65-mm pistol with five bullets and a T1 grenade with the pin attached was found on the terrorist.

As seen above, aircraft hijacking incidents that happened in various ways in different years brought together with them many rules for solutions after each incident. The problems in aircraft hijacking incidents not only put people in difficult situations, but they also put existing airlines, countries, persons and aviation sector in difficult situations. A possible accident will not only affect the people on the plane, but it will also threaten the settlements of the country. When we consider that the decisions that can be taken about these problems can affect the whole world, the importance of finding decisive solutions can be understood.

3. Causes of Aircraft Hijacking

Aircraft hijacking act has various reasons. Most of them are political reasons. After the second world war, the world got separated into two; iron curtain and west blocks and hostility reigned between the two blocks. As a result, people that want to escape from one block to the other started to use planes as vehicles. Aircraft hijacking for political reasons is done for two purposes. One of the reasons is, the people that think their freedom of thought is restricted and that they may get punished for their acts want to escape to another country. Another reason is that people think that aircraft hijacking can draw much attention and they do it to draw attention to the political situation in their country (John, 1991). Aircraft hijacking may have other reasons than political reasons. All reasons for aircraft hijacking act can be grouped as shown below (Çavdar, 1970) (Bayraktar, 1971):

1. People that do not conform to the social and political conditions in their country and want to be freed from that
2. People that have a criminal record and lose their sheltering possibilities in their country
3. People that are mentally unstable
4. People that want to get extorted money out of the country,

5. Acts by terrorist groups to prove themselves, stand out as well as acts with terrorism intents,
6. Refugees that want to be free of oppressive regimes,
7. With ransom goals.

4. Hazards that may occur in Aircraft Hijacking

Aircraft hijacking acts negatively affect the flight safety of airlines that use the air corridors. Air traffic controllers that organize the air traffic may not have much opportunity to interfere with other aircrafts in malfunctions (Roming, 2015). This may cause an accident in the air. Strips to land on differ according to plane types. This makes the accident unavoidable if the plane lands in a strip it is not supposed to.

Economic problems faced by the airline company mixed in an aircraft hijacking constitute another extent of the effect. As a result of aircraft hijacking, beliefs, thoughts of people on the security of planes change and this causes them not to travel with the planes of certain airline companies. This situation affects the financial situation of aviation companies, creates various financial problems.

If an accident is close a settlement, harm to local population can also be considered as another effect. Aircraft hijacking acts affect the trust psychology of people towards aircrafts, also negatively affects aviation economy.

Aircraft hijacking crime may result in many dangerous situations. Some of these situations are listed below.

1. With aircraft hijacking, human lives may be put in danger, the lives of passengers and the crew can be threatened.
2. The fuel in the fuel tank of the plane may be depleted as the flight path is changed. This can cause the plane to crash and therefore the death of people inside; if the settlement the plane crashes into is central, it may cause the death of people in the settlement.
3. The pilot may not be familiar with the navigation means of the area that he/she is forced to land on, he/she may not know the airport well. The area to land on may be insufficient in opportunities.
4. Possible struggle happening in the plane may cause the plane to explode or cause it to lose its balance.
5. As disputes in the plane increase, people that attempt the aircraft hijacking may shoot their weapons; therefore, kill the passengers, crew, and even the pilot.
6. During aircraft hijackings, properties of passengers and the airline company may get damaged.
7. When the plane is taken off its course and forced to in another route, it may be a target for the planes or anti-aircraft guns of another state.
8. If aircraft hijacking incidents continue, people's trust to aircrafts as means of travel may disappear. Also, it may create image problems for airline companies.

5. Aircraft Hijacking in International Agreements

Since the start of commercial aviation, various accidents and incidents have happened. Every incident and accident revealed the deficiencies and inadequacies in the aviation sector. Aircraft hijacking is one of the problems. The fact that these problems occur in periods where transportation is easy and comfortable makes it necessary to address national and international solutions regarding aircraft hijacking crime. With studies conducted prevention measures, punishments, and dissuasive rules were created; this problem has entered penal laws of countries, and international agreements in the international arena. After aircraft hijacking incidents, the investigations mostly try to base the incident on political grounds; this fact makes it necessary to establish some rules both nationally and internationally. The desire to base aircraft hijacking crimes on political grounds comes from the thought of removing the return of the criminals. It is now compulsory to make necessary regulations to separate aircraft hijacking from political crimes with agreements. International agreements for measures taken to deter from aircraft hijacking are explained below (Agrawala, 1973).

5.1. Preventing and Punishing Terrorism Agreement

By this agreement, all acts directed towards damaging or abolishing properties assigned to public service or public properties that took off from one of the contract States are considered as terror acts. Thus, harmful acts against planes got into the punishable area. Another important aspect of the agreement was to ensure the return of such terrorist offenders (Bayraktar, 1971). Those who undertook terrorist acts would not be able to shelter in another country. When we look at this agreement about political events, inability to sheltering in another country shows that it cannot be based on political grounds.

5.2. Geneva Convention

When we look at Geneva Convention Regarding Open Seas, dated 29 April 1958; there is not much information about aircraft hijacking. According to the convention, all kinds of acts, interceptions, and plundering of a ship, a plane, people or properties inside are considered as crimes and express piracy act. An important point here is that acts that are not committed with personal goals do not constitute piracy crime. When we look at it as a political crime, it is not mentioned in the Geneva Convention.

5.3. Tokyo Convention

The Origin of Tokyo Convention is the Cordova incident of 1947 (Urban, 2016). While the plane was over the sea, the passenger Diego Cordova started to argue with other passengers while extremely drunk and bit the pilot and hostess who wanted to interfere. By the marine judicial system of USA, an allegation was made in New York Federal Court; however, the incident came to an end when the court dropped the case because the plane is not a marine vessel. With Tokyo Convention, signed in Tokyo on 14 September 1963, regulations were realized regarding crimes and actions in planes and aircrafts. Tokyo Convention involves an agreement that authorizes the pilot to use force if the crime is committed inside the plane. The captain can use this right through others, in other words, passengers. When we look at the rules and punishments to be applied, the rules of the country the plane is registered in will be applicable. The fundamental regulation of Tokyo Convention is giving the pilot of the plane certain rights. The rise of violence in planes in those years created the Tokyo Convention, and it was thought that it could be solved with the rights given to the pilot. However, increasing incidents in the following years showed that Tokyo Convention was not enough. Tokyo Convention does not have regulations regarding political crimes and aircraft hijacking.

5.4. La Haye Convention

It was accepted on 16 December 1970 in La Haye, International Aviation Law Conference. Let's look at its articles (Resmi Gazete, 1972);

- All contract states guarantee to punish the crime with severe punishments.
- All contract states, where the culprit or the person who is alleged to be the culprit is in, shall arrest this person or take other measures that will ensure their presence if they decide the conditions are enough.
- The crime shall be considered as a returnable crime in the return agreements of existing criminals between contract states.
- In accordance with the national laws of contract states, ICAO shall be informed as soon as possible of the conditions of the crime; measures taken to return the control of the plane to aircraft commander, and to ensure the continuation of the trip for the crew and the passengers; measures taken regarding the criminal or the alleged criminal; and especially about the results of return formalities.
- The State the plane is registered in, the State where the plane landed in, and finally the State of residence of the criminal shall have jurisdiction.

La Haye Convention does not fully make the necessary explanation regarding the return of criminals, and it does not define aircraft hijacking crime. These reasons cause this convention to be insufficient in the solution of the problems.

5.5. European Convention on the Suppression of Terrorism

In article 1, for the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives (Resmi Gazete, 1981):

- a. An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- b. An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971:

With the European Convention on the Suppression of Terrorism, the goal was to abolish the thought of legal gaps by characterizing aircraft hijacking crime, which is an international crime, with political incidents. One of the important problems here was that only a limited number of states accepted this convention. Contract states agreed on necessary sanctions to increase the participation of other countries.

6. Aircraft Hijacking, Turkish Judicial System

Turkey signed the La Haye Convention in 1970 and ratified it right after. Therefore, Turkey is under mutual obligations with 60 States that currently ratified the convention. Therefore, in accordance with the La Haye Convention Turkey: considers it an international crime to wrongly seize airship; undertook Convention provisions regarding banishment of this crime with severe punishments, arrest of the perpetrators or suspects of the crime, prepare, return, criminal pursuit, return of airship control to legitimate airship commander, continuation of the journey of passengers and crew, return of the airship and the loads to their owners. Since La Haye Convention could not deliver effective solutions to existing problems, 2010 Beijing Convention was accepted on 10 September 2010 in Diplomatic Conference in Beijing to complete La Haye Convention. Another important regulation concerning the sanctioning of aircraft hijacking crime is the European Convention on the Suppression of Terrorism (1978). European Convention on the Suppression of Terrorism was published on the Official Gazette dated 26.03.1981, and with no 17291, following the consigning to European Council, it went into effect in Turkey on 20.08.1981; in it, crimes regulated in La Haye and Montreal Conventions are excluded from political crimes. With it, the goal was to prevent the possible gap by abolishing or limiting the possibility of objection to returning request based on the political nature of the crime.

If we look at the regulations in our laws apart from international agreements; one of the fundamental rights of persons, freedom of travel was secured with the 23rd article of the Constitution. Again, with the 5th article of the Constitution, to protect and improve this right is one of the fundamental duties of the state. The primary condition to carry out this duty is to ensure the safety of travel for the public. In that case, the legal matter imposed with sanctions, protected by punishments is the individual-public interest regarding the security of public travel. Besides, the criminal sanctions regarding aircraft hijacking crime are described in article 223 of Turkish Penal Code (Resmi Gazete, 2004). According to the 3rd clause of article 223 of Turkish Penal Code; the person who prevents the act of aircraft by using force or threats or with another illegal act or taking it somewhere else other than the destination shall be punished with five to ten years of imprisonment. It is also regulated in the same article that if the personal liberties are limited and/or intentional injury crimes are committed during the act of this crime, they will separately be judged. Article 152 also covers this.

7. Conclusion

Air transport is considered fast and reliable; it continuously grows and brings together some problems. Unfortunately, making some necessary regulations and decisions in the aviation sector happen as a result of some sad incidents. Recent Malaysia, Germanwings, and Egypt accidents are some examples of this. All three incidents make it a must to rearrange aviation rules and take new measures. Problems in the universalism principle of aviation affect many countries. The fact that there are gaps in security procedures of countries and the punishments not being

deterrent in aircraft hijacking acts; affect many people, regions, and countries (Evans, 1969). Increasing terrorist acts in the last years; acts like aircraft hijacking by terrorist groups make it necessary to review universal rules, penal sanctions, and security procedures. It proves that nowadays aircraft hijacking acts cannot be associated with political events because of international agreements. States that do not sign these agreements shall be confronted with common attitude so that the whole world will apply them. Even though it has been 85 years since the first aircraft hijacking act in 1931, aircraft hijacking incidents still continue to this day. As a solution for this, besides not associating aircraft hijacking acts with political events, it should be obligatory to have a plane police inside the planes, and it should be obligatory for all airline companies to do this in order to not have accidents and losses; this should be applied by all countries. And other safety measure must be taken. For instance following the activity of the pilots is important (Rogalski, 2010). ICAO (International Civil Aviation Organization), of which states are members, should lead states regarding sanctions by inform states that aircraft hijacking crime cannot be associated with political crimes.

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