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HISTORICAL ESSAY ON THE FORMATION OF LEGAL NORMS IN THE FIELD OF AIR TRAFFIC SAFETY OR OPERATION OF AIR TRANSPORT

Abstract

The article analyzes the development of legal regulation of air transport safety in Kazakhstan. The stages of transition from the Soviet legal system to the national legislation, including adaptation of ICAO international standards, are considered. Special attention is paid to the changes in the regulatory framework after the ratification of the Chicago Convention and the role of ICAO in ensuring the safety of international civil aviation. Key legislative acts regulating air transport operation and safety issues are described. The authors emphasize the importance of introducing national aircraft de-icing regulations and improving the system of certification of aviation activities. A comparative analysis of criminal norms on air transport safety in the legislation of the USSR and Kazakhstan is also carried out. The article emphasizes the need for further integration with international standards and modernization of legal regulation of the aviation industry of Kazakhstan.

Key words: air transport, airspace, aviation, traffic safety, air transport operation.

Introduction

The development of legal norms in the field of traffic safety and air transport operation in Kazakhstan has a long and multifaceted history, starting from the Soviet period and ending with modern normative standards. The transition from the Soviet legal system to the national one, taking into account international standards, ensured high requirements for aviation safety in Kazakhstan. However, in the future, there will still be a significant amount of work to be done to improve the legal framework, integrate with international standards and develop new technologies in this area.

Materials and methods

The study employs a multidisciplinary research approach, integrating historical, systemic, comparative legal, and logical methods to analyze the development of legal norms governing air transport safety in Kazakhstan. A historical analysis traces the transition from Soviet-era aviation regulations to contemporary national laws, emphasizing the impact of international standards, particularly

those of the International Civil Aviation Organization (ICAO). The systemic method allows for a structured examination of Kazakhstan's evolving regulatory framework, identifying key legislative milestones and institutional adaptations. The comparative legal method facilitates a juxtaposition of Soviet, Kazakhstani, and international aviation safety standards, highlighting convergences and discrepancies. Finally, the logical method is applied to assess the consistency and effectiveness of regulatory changes, ensuring a comprehensive understanding of the legal transformations in air traffic safety. Primary sources include legislative acts, ICAO regulatory documents, government resolutions, and judicial interpretations, supplemented by academic legal analysis.

Literature review

Legal scholarship on air transport safety has evolved significantly, with substantial contributions from international legal frameworks, national legislation, and academic discourse. The foundational regulatory framework for civil aviation stems from the Chicago Convention of 1944, which established ICAO and introduced key safety standards. ICAO's role in shaping global aviation regulations is extensively documented, emphasizing its standard-setting mechanisms, safety recommendations, and compliance protocols. Research highlights the adaptation of these standards by sovereign states, including Kazakhstan, which formally integrated ICAO principles into its national aviation legislation post-independence.

Comparative legal studies provide insights into the Soviet Union's Air Code (1961) and its subsequent modifications, outlining a centralized, state-controlled approach to aviation safety. Following Kazakhstan's independence in 1991, legal scholars have analyzed the transition from Soviet-era legal provisions to an independent regulatory framework, marked by the 1992 ratification of the Chicago Convention and subsequent aviation safety laws. Studies also explore the criminalization of aviation offenses in Kazakhstan's legal system, comparing them with international best practices.

Recent academic discussions focus on modern challenges in air transport safety, including aircraft certification, anti-icing regulations, and accident investigation protocols. Researchers underscore the increasing alignment of Kazakhstan's aviation laws with ICAO standards, while also identifying gaps in regulatory enforcement and risk mitigation strategies. Additionally, legal analyses emphasize the role of national aviation safety programs, industry compliance mechanisms, and cross-border collaboration in improving flight safety.

Overall, the literature underscores the dynamic interplay between national and international regulatory frameworks, advocating for continuous updates to legal norms in response to technological advancements and evolving global safety standards.

Main provisions

Before independence in 1991, the Republic of Kazakhstan was part of the Soviet Union, and the legal system was oriented towards all-Union standards, including the field of civil aviation. In the USSR, air transport safety was one of the most important tasks, given the high level of state and military significance of aviation, as well as the intensive development of the civil aviation fleet.

One of the key acts of Soviet legislation was the Air Code of the USSR, which was adopted in 1969 and regulated both safety issues and the operation of aircraft. The Air Code of the USSR, a single legislative act containing in a systematic presentation the legal norms regulating public relations associated with the use of the airspace of the USSR and determining the procedure for the activities of civil aviation and civil aeronautics. The Air Code of the USSR was adopted in 1961 (put into effect on January 1, 1962; "Bulletin of the Supreme Soviet of the USSR", 1961, no. 52, art. 538) [1]. It establishes that the USSR has complete and exclusive sovereignty over the airspace of the Soviet state, i.e., all space above the land and water territory of the USSR. The Air Code of the USSR governs the procedure for registering and recording aircraft, the rights and obligations of their crews, the procedure for organizing, registering and operating aerodromes and airports, aircraft flights in the airspace of the USSR, as well as international flights in the airspace of the USSR; determines the procedure for implementing international air transportation of passengers, baggage and cargo, the use

of civil aviation and civil aeronautics in the sectors of the national economy of the USSR; regulates the procedure for issuing permits by the Ministry of Civil Aviation of the USSR for the construction and operation of aerodromes, the procedure for coordinating with this ministry the construction of buildings and structures, high-voltage power lines, communication lines and other structures at a distance of 10 to 30 km, and structures 200 m or more high – up to 75 km from the boundaries of aerodromes. Of great importance for the protection of aerodromes and airports, flight safety, public order, compliance with fire safety regulations, etc. are the legal norms of the Air Code of the USSR, establishing administrative responsibility for violating the relevant rules [1].

After independence in 1991, the Republic of Kazakhstan faced the need to adapt its legal system to international standards. During this period, the process of reviewing and developing new regulatory acts in the field of aviation started.

As a result of the signing of the Convention on International Civil Aviation (Chicago Convention) by 52 states in Chicago on December 7, 1944, under the UN [2], a specialized agency, the International Civil Aviation Organization (ICAO), was created and operates to oversee the safe and systematic growth of international air traffic [3]. The aim of ICAO is to meet the needs of the public for safe, regular, efficient and economical international air transport and to ensure the safe and orderly growth of international civil aviation throughout the world. It encourages the construction and operation of aircraft for peaceful purposes, as well as the establishment and development of airlines, airports and navigation equipment [3].

ICAO standards and recommendations can be divided into groups. The first group of standards and recommendations is aimed at improving the safety of international flights by establishing minimum levels of requirements that personnel, as well as the aircraft and equipment they operate, must meet. The second group of standards and recommendations is aimed at ensuring the safety of the flights themselves by introducing uniformity in order to prevent the possibility of emergency situations arising as a result of any errors in air traffic control procedures or errors related to the operation of aircraft and equipment. The same group of standards also establishes uniformity in the parameters of equipment and machinery used for aircraft navigation on international airlines in any part of the world, as well as uniformity of procedures for air traffic control in all countries of the world. The implementation of ICAO standards and recommendations is a voluntary matter for each sovereign State, but the Chicago Convention requires each State to notify ICAO immediately of differences, if any, between its own practices and those established by the international standard. These differences are promptly communicated by the ICAO Council to all ICAO Member States. International standards and recommendations, as well as amendments thereto, are adopted by the ICAO Council and then submitted to each ICAO Member State for approval. The effects of standards or recommendations become effective in relation to an ICAO Member State only when that State itself expresses a desire to adopt them as its national standards [4].

Results and discussion

The role of ICAO in the field of accident prevention is to: a) develop, within the framework of this manual, the overall concepts of accident prevention and provide guidance based on proven methods; b) establish international procedures for the investigation and reporting of accidents and incidents. This is achieved through Annex 13 – Aircraft Accident Investigation, Manual of Aircraft Accident Investigation and the Aircraft Accident/Incident Data Reporting System (ADREP); c) dissemination of accident and incident information through ADREP and other means; d) conducting specific safety studies based on ADREP data [5, p. 7].

Since unlawful intrusions into airspace continue to pose a serious threat to the safety and security of international civil aviation, ICAO is implementing a number of activities and programs aimed at preventing such intrusions. In response to the terrorist attacks on the United States on 11 September 2001, ICAO developed an Air Transport Security Action Plan and a safety training program, which currently includes seven training courses. ICAO currently maintains 10 safety training centers, promoting regional cooperation in this vital area.

In addition, ICAO responds to requests from developing countries for assistance in improving air transport systems and training aviation personnel. It has helped establish regional training centers in several developing countries and has provided opportunities for thousands of students to study in ICAO-registered schools. ICAO is currently developing a satellite-based system to meet the future needs of civil aviation for communications, navigation, radar surveillance and air traffic control. The system uses the latest advances in satellite and computer technology, data links and avionics to meet increasing operational needs. This integrated global system will enhance the safety, organization and operation of air transport. The system, endorsed by ICAO Member States, is currently being realized. ICAO cooperates with the International Air Transport Association (IATA), the International Association of Airport Councils (ACI), the International Federation of Air Transport Pilots Associations (IFALPA) and the International Council of Aircraft Owners and Pilots Associations (IAOPA) [3].

The first ICAO standards and recommendations on aircraft accident investigation were adopted following the first (1946) and second (1947) ICAO Specialized Divisional Meetings of Aircraft Accident Investigation Specialists, in April 1951, in the form of Annex 13 to the Chicago Convention [6].

In addition to the above, in 2017, ICAO issued ICAO Doc10 062 – Manual for Considering Cabin Safety Aspects in Aircraft Accident and Incident Investigations. This document contains guidance material primarily focused on cabin safety aspects and supplements the above-mentioned Investigation Manual [7].

It should be noted that these documents are among the sources of international air law, which is defined as the branch regulating relations between states on the use of airspace and the organization of international air communications. In the Republic of Kazakhstan, the Chicago Convention was ratified by the Resolution of the Supreme Council of the Republic of Kazakhstan dated July 2, 1992 [8].

Today, the legal system of Kazakhstan in the field of air transport safety comprises a comprehensive set of regulatory acts, including both national laws and international agreements. The main acts are: Law of the Republic of Kazakhstan dated July 15, 2010 No. 339-IV “On the Use of the Airspace of the Republic of Kazakhstan and Aviation Activities” [9]; Order of the Minister of Investments and Development of the Republic of Kazakhstan dated July 27, 2017 No. 505 “On approval of the Rules for the submission and investigation of aviation data and the investigation of aviation accidents and incidents in civil and experimental aviation” [10]; Resolution of the Government of the Republic of Kazakhstan dated March 11, 2016 No. 136 “On approval of the Flight Safety Program in the Sphere of Civil Aviation” [11]. In the Criminal Code of the Republic of Kazakhstan, offenses in air transport are considered in Chapter 14 “Transport criminal offenses” [12].

Kazakhstan, with its diverse climate and vast territory, faces regular risks associated with aircraft icing, so the adoption of the “Rules for Anti-Icing Protection of Aircraft on the Ground” dated 07.03.2023 [13] was an important step in improving the level of aviation safety and bringing national legislation in line with the recommendations of the International Civil Aviation Organization (ICAO), as well as the best practices of countries with similar climatic conditions (e.g. Canada, Russia, Scandinavian countries). The Rules define the procedure for anti-icing protection of aircraft on the ground in the civil aviation of the Republic of Kazakhstan. The key incentive for their development was the findings of the investigation of the accident with the Fokker-100 aircraft of BEK AIR on the impact of ground icing [14], according to which recommendations were crafted to develop and implement standard Rules for Anti-Icing Protection of Aircraft in order to improve the level of flight safety.

An important part of the regulatory framework is the certification system, which ensures the safety and quality of services in the aviation sector. This includes certification of airlines, pilots, aviation equipment and maintenance.

Considering the provisions of the Criminal Code of the Kazakh SSR of 1959, the Criminal Code of the Republic of Kazakhstan as amended in 1997 and 2014, we can see that there are no significant changes in sanctions.

In accordance with the Union legislation, a set of measures for organizing air traffic and ensuring its safety was also created in Kazakhstan, which included standards for the technical operation of aircraft, the organization of air transportation and personnel training [1].

Table 1 – Criminal Code of the Republic of Kazakhstan

Criminal Code of the Kazakh SSR 1959	Criminal Code of the Republic of Kazakhstan 1997 (with amendments and additions as of 28.06.2012)	Criminal Code of the Republic of Kazakhstan 2014 (with amendments and additions as of 01.01.2025)
<p>Article 71. Violation of traffic safety and transport operation rules Violation by a railway, water or air transport employee of traffic safety and transport operation rules that resulted in accidents with people, a crash, accident or other serious consequences, as well as poor-quality repair of transport vehicles, tracks, signaling and communication equipment that resulted in the same consequences, - shall be punishable by imprisonment for a term of three to fifteen years. The same acts, if they did not result in, but knowingly created a threat of the onset of the same consequences - shall be punishable by imprisonment for a term of one to three years or correctional labor for up to two years.</p> <p>Article 71-1. Violation of the procedure for using the airspace of the USSR and the Kazakh SSR Violation of the procedure for using the airspace of the USSR and the Kazakh SSR during flights of aircraft piloted by persons who are not air transport employees, missile launches, all types of shooting, blasting operations or other activities related to the lifting, movement or descent of material objects in the airspace of the USSR and the Kazakh SSR, resulting in accidents with people or other serious consequences, - shall be punishable by imprisonment for a term of two to ten years. The same acts, if they did not result in, but knowingly created a threat of the occurrence of the consequences provided for in the first part of this article, - shall be punishable by imprisonment for a term of up to one year or correctional labor for a term of up to two years, or a fine of up to three hundred rubles.</p> <p>Article 223. Violation of rules for maintaining order and safety of air traffic Violation of the rules established by the Air Code of the USSR and issued by the Ministry of Civil Aviation of the USSR on the maintenance of order and safety of air traffic and on the protection of property of the civil air fleet, as well as sanitary and fire safety rules of the civil air fleet, if the violation caused or could cause serious consequences and is not an malfeasance for the violator, - shall be punishable by imprisonment for up to three years, or correctional labor for up to two years, or a fine of up to three hundred rubles. Carriage of explosive or flammable substances by a passenger on an aircraft - shall be punishable by imprisonment for up to three years, or correctional labor for up to two years, or a fine of up to two hundred rubles. Actions provided for in part two of this article, which entailed serious consequences, - shall be punishable by imprisonment for a term of three to ten years.</p>	<p>Article 295. Violation of traffic safety rules and operation of rail, air or water transport 1. Violation of traffic safety rules or operation of rail, air, sea or river transport by a person who, by virtue of the work performed or the position held, is obliged to observe these rules, if this act has resulted through negligence in causing serious or moderate harm to a person’s health - shall be punishable by correctional labor for a term of six months to two years, or by imprisonment for a term of up to two years, or by imprisonment for a term of up to two years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years. 2. The same act, which through negligence resulted in the death of a person - shall be punishable by imprisonment for a term of up to seven years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years. 3. The act specified in Part One of this Article, which resulted through negligence in the death of two or more persons - shall be punishable by imprisonment for a term of four to ten years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years. 4. The act specified in Part One of this Article, if it did not result in, but knowingly created a threat of the occurrence of the consequences specified in Parts One, Two or Three of this Article - shall be punishable by a fine of up to one thousand monthly calculation indices, or by deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years, or by correctional labor for a term of up to one year, or by imprisonment for a term of up to one year, or by imprisonment for the same term, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to two years. Note. Transport shall mean all types of rail, sea, river and air transport, including small sea and river vessels. Amendments to the Criminal Code Article 295 as amended by the laws of RK dated 05.05.2000 N 47; dated 18.01.2011 N 393-IV.)</p>	<p>Article 344. Violation of traffic safety rules or operation of rail, air, sea or river transport Part 1 has been amended in accordance with the Law of the Republic of Kazakhstan dated 12.07.18 No. 180-VI (see old version)</p> <p>1. Violation of traffic safety rules or operation of rail, air, sea or river transport by a person who, by virtue of the work performed or the position held, is obliged to comply with these rules, if this act has resulted, through negligence, in the infliction of serious or moderate harm to human health or in the infliction of major damage - shall be punishable by a fine of up to two thousand monthly calculation indices or correctional labor in the same amount, or community service for a term of up to six hundred hours, or imprisonment for a term of up to two years, or imprisonment for the same term, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years. 2. The same act, which through negligence resulted in the death of a person - shall be punishable by imprisonment for a term of up to seven years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years. 3. The act provided for in part one of this article, which through negligence resulted in the death of two or more persons - shall be punishable by imprisonment for a term of four to ten years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.</p>
<p>https://online.zakon.kz/Document/?doc_id=1004273</p>	<p>https://online.zakon.kz/Document/?doc_id=31318311&doc_</p>	<p>https://online.zakon.kz/Document/?doc_id=31575252&sub_id=3440000&pos=5442;-45#pos=5442;-45</p>
<p>Note: Compiled by the authors.</p>		

Conclusion

Time is running out for aviation equipment now, and in recent decades the problem of ensuring aviation safety has become quite acute. States, to varying degrees, experience pressure from public opinion during the next emergency incident related to an aviation accident. Therefore, the problem of ensuring the safety of civil aviation aircraft and the possibility of its legal regulation is at the forefront of the aviation policy pursued by the governments of many countries [15, p. 119].

Despite significant progress in the legal regulation of the aviation sector, there are a number of challenges that the Republic of Kazakhstan faces in the field of air transport safety. One of the primary areas is the further improvement of the aircraft certification system, improvement of flight safety control procedures and advanced training of specialists. In addition, in the context of global changes in the aviation industry, it is necessary to actively work on harmonizing national standards with international requirements, which will allow Kazakhstan to maintain a high level of air transport safety and integrate into the global aviation system.

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ҚОЗҒАЛЫС ҚАУІПСІЗДІГІ НЕМЕСЕ ӘУЕ КӨЛІГІН ПАЙДАЛАНУ САЛАСЫНДАҒЫ ҚҰҚЫҚТЫҚ НОРМАЛАРДЫҢ ҚАЛЫПТАСУЫНЫҢ ТАРИХИ СИПАТТАМАСЫ

Аңдатпа

Мақала Қазақстанда қозғалыс қауіпсіздігін құқықтық реттеудің дамуын және әуе көлігін пайдалануды талдауға арналған. Халықаралық Азаматтық авиация ұйымының (ICAO) халықаралық стандарттарын бейімдеуді қоса алғанда, кеңестік құқықтық жүйеден ұлттық заңнамаға көшу кезеңдері қарастырылады. Чикаго конвенциясы ратификацияланғаннан кейінгі нормативтік базадағы өзгерістерге және халықаралық азаматтық авиацияның қауіпсіздігін қамтамасыз етудегі ICAO рөліне ерекше назар аударылады. Әуе көлігін пайдалануды және ұшу қауіпсіздігі мәселелерін реттейтін негізгі заңнамалық актілер сипатталған. Авторлар әуе кемелерін мұздан қорғаудың ұлттық ережелерін енгізудің және авиациялық қызметті сертификаттау жүйесін жетілдірудің маңыздылығын атап көрсетеді. Сондай-ақ, КСРО мен Қазақстан заңнамасында әуе көлігінің қауіпсіздігін қамтамасыз ету жөніндегі қылмыстық нормаларға салыстырмалы талдау жүргізілуде. Мақала халықаралық стандарттармен одан әрі ықпалдасу және Қазақстанның авиация саласын құқықтық реттеуді жаңғырту қажеттігін атап көрсетеді.

Тірек сөздер: әуе көлігі, әуе кеңістігі, авиация, қозғалыс қауіпсіздігі, әуе көлігін пайдалану.

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ИСТОРИЧЕСКИЙ ОЧЕРК СТАНОВЛЕНИЯ ПРАВОВЫХ НОРМ В СФЕРЕ БЕЗОПАСНОСТИ ДВИЖЕНИЯ ИЛИ ЭКСПЛУАТАЦИИ ВОЗДУШНОГО ТРАНСПОРТА

Аннотация

Статья посвящена анализу развития правового регулирования безопасности движения и эксплуатации воздушного транспорта в Казахстане. Рассматриваются этапы перехода от советской правовой системы к

национальному законодательству, включая адаптацию международных стандартов Международной организации гражданской авиации (ИКАО). Особое внимание уделяется изменениям в нормативной базе после ратификации Чикагской конвенции и роли ИКАО в обеспечении безопасности международной гражданской авиации. Описаны ключевые законодательные акты, регулирующие эксплуатацию воздушного транспорта и вопросы безопасности полетов. Авторы выделяют значимость внедрения национальных правил противообледенительной защиты воздушных судов и совершенствования системы сертификации авиационной деятельности. Также проводится сравнительный анализ уголовных норм по обеспечению безопасности воздушного транспорта в законодательстве СССР и Казахстана. Статья подчеркивает необходимость дальнейшей интеграции с международными стандартами и модернизации правового регулирования авиационной отрасли Казахстана.

Ключевые слова: воздушный транспорт, воздушное пространство, авиация, безопасность движения, эксплуатация воздушного транспорта.