

**HISTORICAL ANALYSIS AND INTERNATIONAL EXPERIENCE IN  
COMBATING AIRCRAFT HIJACKINGS. HIJACKING STATISTICS**

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**Abstract**

Aircraft include airplanes, helicopters and other aircraft powered by autonomous engines, as well as various aeronautical devices - balloons, gliders, etc., designed to move people and cargo. Both the hijacking and the seizure of a vehicle for the purpose of theft presuppose the establishment of control over this vehicle, from this moment the crime is considered over. Hijacking is objectively associated with a violation of the rules of safety and operation of railway, air or water transport, with the presence on board of people illegally deprived of liberty (Article 127 of the Criminal Code), therefore such crimes do not require independent qualification. The criminal's demand to provide the vehicle provided for by the commented article under the threat of life-threatening violence to the captured hostages. The subject of the crime is a person who has reached the age of 16.

**Key words:** HIJACKING, AIRCRAFT, HIJACKING, HISTORICAL ANALYSIS, INTERNATIONAL EXPERIENCE, TRANSPORT CRIMES, SUBJECT OF HIJACKING.

The public danger of this crime lies in the fact that the uncontrolled movement (movement) of these types of transport poses a threat to public safety, the onset of serious consequences associated with accidents, catastrophes and human casualties. For example, when hijacking an aircraft by criminals and unauthorized crossing of the state border, there is a risk of aircraft collision, bringing air defense systems into combat readiness and the use of firepower by a neighboring state, and when serious consequences occur, complications of interstate relations.

The out-of-control movement of an air or water transport vessel or a railway train disrupts the normal operation of these modes of transport, poses a threat to public safety. This, first of all, is the public danger of the crime in question. In addition, there is a threat to the life and health of crew members, drivers, passengers. Hijackings or seizures of these types of transport often lead to accidents and catastrophes. The main object of this crime is public safety. According to Article 1 of the Law of the Russian Federation of 05.03.1992 N 2446-1 "On security" (as amended. from 25.07.2002) security - the state of protection of vital interests of the individual, society and the state

from internal and external threats. Socially dangerous acts, responsibility for which is provided for by Section IX of the Criminal Code of the Russian Federation, encroach only on the safety of society as a whole. An additional direct object, i.e. the one that is always harmed when encroaching on the main object during the theft of these modes of transport, are property relations. Optional direct object, i.e. those who are not harmed in all cases of seizure or theft may be human life, health, and freedom.

A water vessel is a structure for transporting cargo and passengers by water, intended for industrial, military, research and other purposes. It can be sea and river, self-propelled and non-self-propelled, directly water, surface (air cushion) and underwater.

Railway rolling stock includes means of transportation of railway transport: electric locomotives, locomotives, wagons, etc.

Hijacking is taking possession of a vessel or train without violence or with violence that is not dangerous to the life or health of the victim, both during parking and while following the route, followed by its retention during the movement of the vessel or train along the route chosen by the criminal. The hijacking is completed from the beginning of the movement of the vessel or train along the route chosen by the culprit, regardless of the duration of such movement.

Seizure is the taking, without violence or with violence that is not dangerous to the life or health of the victim, of a vessel or a train during their parking or while en route.

The purpose of this course work is to consider the features of the crime of hijacking a vessel of air or water transport or railway rolling stock (Article 211 of the Criminal Code of the Russian Federation).

Based on the goal, the following tasks can be distinguished:

- to give a general description of the crime under study, to consider the history of the development of legislation.
- to study the object and objective side of the crime of hijacking an air or water transport vessel or railway rolling stock.
- to consider the subject and the subjective side of the analyzed crime.
- to analyze the problems of qualification of the crime of hijacking an aircraft or water transport or railway rolling stock (Article 211 of the Criminal Code of the Russian Federation).

Among the crimes against public safety, a special place is occupied by the hijacking of an air or water transport vessel or a railway rolling stock, responsibility for which is provided for in Article 211 of the Criminal Code. Hijacking is often associated with the death of people, causing harm to health, material and other damage, illegal crossing (flight) of the border, hostage-taking, etc.

The public danger of hijacking an air or water transport vessel or railway rolling stock is determined by the fact that it is associated with a violation of the established procedure for the use of air and water space, transport communications, contains a potentially high threat to the life and health of passengers, crew members, other persons, can lead to accidents, catastrophes. In 1993, 3 cases of hijacking of an aircraft were registered, in 1994 5, and all courts of Russia were convicted according to the sentences that entered into force in 1991 3, 1992 - 2, 1993- 12, 1994 -1, 1995 - 1, 6 months of 1996, 3 persons.

Statistical data on the hijacking of air or water transport vessels or railway rolling stock in 1997 - 2002 on the territory of Russia are as follows: in 1997 - 20 registered crimes, 1998 - 18, 1999 - 10, 2000 - 12, 2001 - 14, in 2002 - 10

The history of criminalization of this criminal act, as well as the theft of vehicles similar to it on the objective side (Article 166 of the Criminal Code of the Russian Federation) is as follows. The Decree of the Presidium of the Supreme Soviet of the RSFSR dated 17.04.1973 of the Criminal Code of the RSFSR was supplemented with Article 213.2 "Hijacking of an aircraft", placed in Chapter 10 "Crimes against public safety, public order and public health".

In the Criminal Code of the RSFSR of 1960, in the same chapter 10, there was already a norm providing for liability for theft - Article 212.1 "Theft of vehicles" (introduced by Decree of the Presidium of the Supreme Soviet of the RSFSR of 03.07.1965). The Law of 01.07.1994 excluded Article 212.1 of the Criminal Code of the RSFSR, but in Chapter V of the Criminal Code of the RSFSR "Crimes against property" introduced Article 148.1 "Unlawful seizure of a vehicle, horse or other valuable property without the purpose of theft." The legislator refused the term "hijacking" in this case. From 1973 to mid-1994, there were two criminal law norms in the Criminal Code of the RSFSR providing for liability for theft, and they differed only in the subject of the crime - a vehicle involved in road traffic and an aircraft.

Since mid-1994, only one crime has been called "hijacking" - Article 213.2 "Hijacking of an aircraft". It should be noted that in one of the drafts of the Criminal Code of the Russian Federation, both of these crimes were placed in one chapter "Transport crimes" of the section "Crimes against public Safety". In the current Criminal Code of the Russian Federation, in the chapter "Crimes against public Safety", instead of the previously existing article 213.2 "Hijacking of an aircraft", the Criminal Code of the RSFSR provides for criminal liability for hijacking an aircraft or water transport or railway rolling stock.

Unlike the Criminal Code of 1960, the subject of the crime in the new Criminal Code is formulated more broadly. In accordance with the disposition of Article 211, the subject matter is, firstly, an air transport vessel, secondly, a water transport vessel and, thirdly, a railway rolling stock. Air transport includes any aircraft supported in the

atmosphere due to interaction with air, other than interaction with air reflected from the Earth's surface (airplanes, helicopters, gliders, airships, motorized airplanes, etc.). The category of aircraft as the subject of the analyzed crime should also include aircraft of the Air Force, the Ministry of Internal Affairs, the FSB and other departments. A water transport vessel is a sea, river or lake vessel used to transport passengers, cargo, luggage by water, for fishing, mining, research, technical, rescue and other types of work, including hovercraft, hydrofoils, ekranoplans. Railway rolling stock should be understood as mechanical rail transport, with the exception of trams (locomotives, wagons, including subway trains, platforms, tanks, cranes, trolleys, etc.). Metro refers to railway, not urban transport in accordance with the Resolution of the Council of Ministers of the USSR of May 21, 1975, when it was transferred to the Ministry of Railways. The departmental affiliation of the transport, as well as the form of ownership of it, do not matter for qualification.

In the specialized literature, small-sized sea and river motor vessels were not recognized as the subject of water transport crimes, but referred to the vehicles referred to in the note to Article 211 of the Criminal Code of 1960 (Violation of traffic safety and operation of vehicles by a person driving vehicles.) 'K. In judicial practice, a violation by a person of the current rules for the management of small vessels, resulting in the death of people or other grave consequences, was qualified under Article 213 of the Criminal Code of 1960. (Violation of the rules in force on transport). Such a decision was forced, since the subject of a water transport crime was traditionally considered to be persons who were supposed to be in the service of the transport system. Small motor vessels could be in personal ownership and, consequently, operated by persons who were not recognized as subjects of the crime provided for in Article 85 of the Criminal Code (Violation of traffic safety and operation of transport). In order to eliminate this gap, judicial practice followed the path of qualification under Article 213 of the Criminal Code of 1960.

At present, the situation has changed significantly. Firstly, the norms on transport crimes, regardless of the type of transport, are concentrated in one chapter 27 of the Criminal Code. Secondly, not only small motor vessels can currently be owned by individuals, but also boats, catamarans, yachts of any displacement, as well as gliders, trikes, helicopters and airplanes, etc. Consequently, the circle of persons managing such vessels and not belonging to special entities has significantly expanded. Thirdly, in art. 268 of the Criminal Code (Violation of the rules ensuring the safe operation of transport), the subject of the crime is explicitly indicated - any participant in the movement, except for those provided for in Articles 263 and 264 of the Criminal Code, which refers to special subjects. Finally, fourthly, in order to avoid a double standard, a uniform approach to the definition of vehicles is necessary.

Taking into account these circumstances, small motor vessels should also be referred to as water transport vessels, which, in accordance with the note to Article 110 of the Code of Administrative Offences, should be understood as self-propelled vessels with a main engine with a capacity of less than 75 hp and non-self-propelled vessels with a gross capacity of less than 80 registered tons, motor vessels belonging to citizens (regardless of engine power), and for air transport vessels - trikes, balloons, etc. Appropriate recommendations for investigative and judicial authorities should preferably be given in the resolution of the Plenum of the Supreme Court of the Russian Federation. According to the subject of the crime, this composition is distinguished from the unlawful taking of a car or other vehicle without the purpose of theft (Article 166 of the Criminal Code), where such is a mechanical vehicle that is not related to rail, air or water transport.

It seems reasonable to refer to the experience of the CIS member States in resolving issues about the object and subject of the crimes under consideration. All criminal codes of the CIS States provide for criminal liability for the hijacking (unlawful seizure) of an air or water transport vessel or railway rolling stock. There are differences in the location of these norms in a Special part of the Criminal Code, their name, the definition of the subject of the crime, the type and duration of punishment for these actions. Thus, in the Criminal Code of the Republic of Belarus, the Republic of Uzbekistan and Ukraine, the norm on the hijacking of an air or water transport vessel or railway rolling stock is placed in the chapter "Crimes against traffic safety and operation of vehicles", and in the Criminal Code of the Republic of Tajikistan - in the chapter "Transport crimes".

In other Criminal Codes and the Model Code, responsibility for this crime is provided for in the chapter "Crimes against public safety". There are not so significant differences in the name of these norms. Thus, in the Criminal Code of the Republic of Azerbaijan, it is not about railway rolling stock, but about the hijacking of a railway train; in the Criminal Code of the Republic of Moldova, only a river vessel is named as the subject of a crime, and not a water transport vessel; in the Criminal Code of Ukraine and the Republic of Uzbekistan, the subject of water transport is specified - a sea or river vessel; The Criminal Code of Georgia uses the term "illegal possession", not "hijacking". The issue of punishment for the crime in question was decided by legislators of all CIS countries in almost the same way: there is only one type of punishment - imprisonment. The exception is the Criminal Code of the Republic of Belarus, where, along with deprivation of liberty, restriction of freedom is provided as an alternative punishment. The minimum and maximum terms of imprisonment do not differ much. Thus, in most Criminal codes, a maximum period of 8 years is provided for the simple composition of hijacking a vessel of water or air transport or railway rolling stock, in the Criminal Code of the Republic of Uzbekistan - 10 years, in Ukraine

- 6 years. The minimum term of imprisonment under the first part of the relevant articles is basically 4 years, in the Criminal Code of the Republic of Moldova the minimum term is not specified, in the Criminal Code of the Republic of Kazakhstan - 2 years.

Practically in all criminal codes there are qualified and specially qualified elements of this crime. The maximum sentence in the form of imprisonment under part three of the relevant articles is 15 years, the minimum is 8 years. The only criminal law - the Criminal Code of the Republic of Tajikistan - provides for the death penalty for the hijacking or seizure of these types of transport under particularly aggravating circumstances

The immediate object of the crime under consideration is the relations that provide the foundations of public safety in air, water and rail transport. Additional direct objects may be public relations that ensure the life and health of people, property, traffic safety, environmental safety.

The subject of the crime is an air vessel (various aircraft designed to move people or cargo by air) or water transport (vehicles designed to move people and cargo by water and belonging to the category of transport vessels), railway rolling stock (any machines and mechanisms moving along railway tracks using mechanical force).

The objective side of the crime is expressed in the commission of one of two alternative forms of active actions - the hijacking of the corresponding vessel or rolling stock or in their seizure for the purpose of hijacking. Hijacking should be understood as unauthorized nonviolent actions to remove a vessel or a train from their location. Hijacking involves, firstly, the establishment of control by the perpetrators over the vessel or rolling stock and, secondly, the movement of the vessel or train from the place where they were at a certain specific moment. A mandatory characteristic of hijacking is its non-violent nature. The position of A. I. Chuchaev seems to be justified, who believes that "a violent way of establishing illegal control over a vessel is not covered by the concept of theft, but is a mandatory sign of the seizure of a vehicle." Seizure is not a method of hijacking, but one of the ways to prepare for hijacking, which is characterized by its specific features and, above all, by a violent way of committing a crime. Considering that in this case, the public danger of what has been done sharply increases, the legislator gives this method of preparation, along with hijacking, the character of an independent element of the objective side. Another decision contradicts the legislative wording. The consolidation in the law of the action and the method of its commission as single-order and independent phenomena is not only illogical, but also contradicts the requirements of legislative technique.

The hijacking of a vehicle is considered to be over at the moment of its movement under the control of the invader, contrary to the will of the owner. If this is an aircraft, then the moment of the end of the crime falls on the beginning of the

aircraft's separation from the ground. The seizure of a vehicle is considered completed at the moment when the invaders establish actual control over it. If the vehicle is in motion, then the moment of the end of the crime falls on the beginning of the vehicle's departure from the planned route and movement under the control of the invaders.

Hijacking an aircraft on the ground is a completed crime from the moment it takes off, regardless of whether it was preceded by the seizure of the vessel or not. In the air, the vessel is recognized as stolen from the moment the route set for it is changed at the will of the criminal.

The hijacking of a water vessel or a railway rolling stock that is not in motion is completed from the moment they are put into motion under the control of criminals. If the named vehicles are in motion, the crime is over from the moment of evading the specified route.

The seizure of an air or water vessel and railway rolling stock is the establishment of (violent or non-violent) control over them, when the subject has the opportunity to dispose of them for his own purposes. The seizure most often precedes the theft, but it can also act as an independent sign of the objective side of the crime if there was a purpose for the subsequent theft of the vehicle.

In the absence of a hijacking target, the seizure does not constitute this crime. For example, the seizure of a ship and the declaration of passengers as hostages are qualified, depending on the specific circumstances, under Article 126 or 127 of the Criminal Code.

There may be stages of the commission of a crime if, in the course of preparatory actions or acts directly aimed at hijacking or seizure, the development of the crime was interrupted and not brought to an end for reasons beyond the control of the will of the perpetrator.

For example, when making a flight on the Moscow - Bryansk route, S. tried to hijack a Yak-40 aircraft, but his attempts with the use of force and threats to enter the pilot's cabin were unsuccessful and the aircraft landed at the destination airport, where the criminal was detained.

Thus, hijacking should be recognized as cases when:

- a) the vessel is without a crew, the train is without a driver, passengers, security;
- b) these vehicles are stolen by agreement with the crew, maintenance personnel or security;
- c) the above persons for some reason cannot influence the behavior of hijackers and therefore occupy a passive position. Awareness or non-awareness by other persons of the nature of the hijackers' behavior at the time of the relevant actions does not matter for qualification.

Qualifying signs of the crime under consideration, according to Part 2 of Article 211 of the Criminal Code, are its commission:

- 1) by a group of persons by prior agreement (item "a");
- 2) repeatedly (item "b");
- 3) with the use of violence dangerous to life or health, or with the threat of such violence (item "c");
- 4) with the use of weapons or objects used as weapons (item "t").

The content of these signs basically coincides with the content of similar signs of robbery (Article 162 of the Criminal Code of the Russian Federation).

Particularly qualifying signs of the act in question, according to Part 3 of Article 211 of the Criminal Code of the Russian Federation, are the commission of it:

- 1) an organized group;
- 2) causing the death of a person by negligence of the culprit;
- 3) other grave consequences. The content of these particularly qualifying signs basically coincides with the content of similar signs of the previously considered elements of crimes.

Other grave consequences in this case are the destruction or damage of vehicles, passenger property, airfield, port or pier facilities, the occurrence of accidents, catastrophes or deaths, disorganization for a long period of transport operation, as well as premeditated murder in the process of hijacking or seizure of a vehicle.

Premeditated murder is not covered by the signs of this crime and is subject to qualification according to the totality of crimes (Articles 105 and 211).

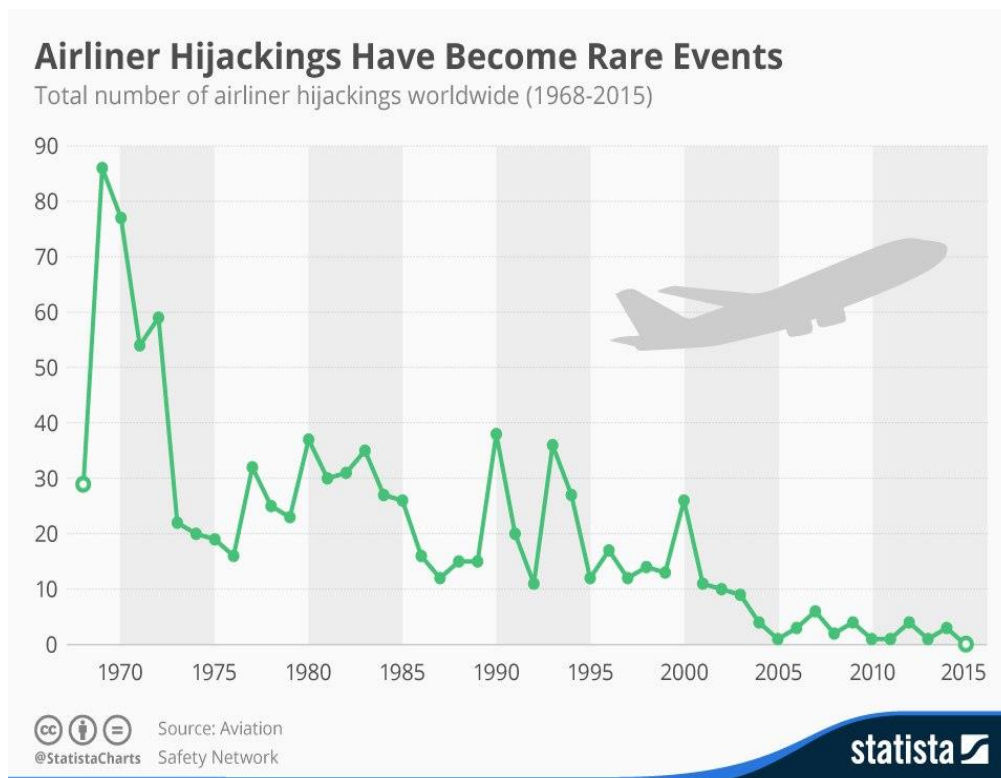
The concept of a group crime is given in Article 35 of the Criminal Code.

The use of violence dangerous to life or health, or the threat of the use of such violence includes various types of physical or mental impact on the persons driving the vehicle, or on the passengers on the vehicle in order to overcome real or possible resistance, seizure or theft of the vehicle. Part 2 of Article 211 includes violence and the threat of violence dangerous to human life and health, violence to a lesser extent is covered by part 1 of Article 211. Violence must be a means of hijacking, otherwise the grounds for the application of Part 2 of art. 211 are missing.

Yesterday's hijacking of an EgyptAir flight from Cairo to Alexandria was a rare event. Between 1968 and 1972, airliner hijackings were commonplace around the world, occurring almost weekly in the United States alone. Since then, however, heightened airport security measures including x-ray machines and metal detectors have dramatically reduced the number of hijackings.

Even when they do occur, hijackers are faced with strengthened and bullet resistant cockpit doors onboard, as well as air marshals in some cases. Even though yesterday's incident was resolved peacefully after the Airbus A320 landed in Cyprus, questions are going to be raised about security measures in Egyptian airports. In October, a Russian airliner is suspected to have been destroyed by a bomb shortly after taking off from Egypt's Sharm el-Sheikh International Airport.





Pic. 1 Airliner hijackings

The threat of violence must be real. The threat of reprisals in the future cannot be recognized as a sign of a crime under Part 2 of Article 211 of the Criminal Code. There is no threat to the requirement to lift, for example, an airplane into the air or to change the route of a sea vessel, if it was not accompanied by violence or the threat of its use. The weapons or other objects used in the threat must be capable of actually causing harm. The use of objects that do not have such a property (a model of a pistol, an empty grenade, etc.) does not give grounds for qualifying an act under Part 2 of art. 211 CC. At the same time, intimidating the crew with a statement about the presence of an explosive device on the vehicle, which will be activated if the demands of criminals are not met, is recognized as a threat regardless of whether they actually have such an explosive device.

Other grave consequences involve the infliction of serious or moderate harm to the health of several persons, causing major material damage, disorganization of transport for a long time, etc.

Guilt is expressed in intent in relation to the theft or seizure of a vehicle. In relation to grave consequences, both intent and carelessness are possible. The death of people is allowed by the article only if it is caused by negligence.

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