



FALCON PILOTS HELD RESPONSIBLE FOR PASSENGER LUGGAGE CONTENT

News / Business aviation



The **pilots** of Dassault **Falcon** 50 F-GXMC—which in March 2013 was caught in Punta Cana, Dominican Republic, just before takeoff for Saint-Tropez, France, with 1,500 pounds of cocaine on board (street value \$26 million)—are crying foul.

The case has since been known as “Air Cocaine,” and in August pilots Pascal Fauret and Bruno Odos [received a 20-year jail sentence](#) from a Dominican tribunal for their “connection to commit international drug smuggling.” But they claim the punishment contradicts international conventions, a position supported by pilots’ unions. The point at issue is whether a crew is responsible for the baggage and cargo loaded aboard an aircraft.

The Dominican judges said the flight was private so the pilots are **responsible**. While the crewmembers and pilot union with whom **AIN** talked agree that pilots of a private flight are responsible, they contend that the offending flight should be considered commercial, absolving the

pilots of any responsibility for the baggage and cargo. The pilots were employed by now-defunct SN-THS, trading as Aerojet Corporate, a charter operator based in Lyon, France. The aircraft was in SN-THS's fleet under a management contract and the owner had no relationship with the customer. The flight was assigned a flight number ending with "N," meaning non-scheduled air transport and implying it was commercial, argue the pilots.

Quoting Annex 17 of the Convention on international civil aviation, Christophe Naudin, criminologist and air transport security specialist, told **AIN**, "Each contracting state shall establish measures to ensure that originating hold baggage is screened before being loaded onto an aircraft engaged in commercial air transport" and the baggage must then be "protected from unauthorized interference." Fauret's and Odos's lawyers thus seek to place responsibility on the Dominican state, since the country is a member of ICAO.

The International Federation of Airline Pilots' Associations (Ifalpa) holds a similar opinion. "As pilots, we cannot be responsible for what is contained in the luggage or cargo that is placed on the aircraft. We have no practical way to know the contents of luggage or cargo loaded on the aircraft. It would appear that the ruling of the judge in this case makes pilots criminally responsible for the contents of the baggage and cargo on the aircraft, even though they have no responsibility for or means to know what is loaded on the aircraft," captain Fanie Coetzee, Ifalpa's executive v-p for professional and government affairs, wrote in a letter to all member associations in late August.

In European regulations, there is no such thing as a "direct responsibility of the pilot when it comes to passenger luggage content," a spokesman for the French civil aviation authority (DGAC) told **AIN**. The closest security rule, he suggested, deals with cargo that might jeopardize the safety of the aircraft or its occupants. In that instance, the commander can unload it. "But this rule does not target illegal substances," the DGAC spokesman acknowledged.

A spokesman for the French Gendarmerie police contradicted the DGAC's opinion, telling **AIN**, "The pilot is actually responsible for his cargo," but he could not gather any more detail from his colleague investigators. Commenting on the gendarmerie's position, the DGAC maintains "it has no rule that would substantiate the responsibility of the pilot."

The Tokyo convention may be another document of reference with global applicability. Among others, it covers "offenses against penal law." In the Punta Cana case, the aircraft was considered in flight under the convention's terms because its doors were closed. The commander therefore had full authority if he suspected something. However, the Tokyo convention focuses on instances when a passenger threatens safety or "good order and discipline" on board.

The pilot's remit is limited, according to Xavier Marchand, an SNPL France Alpa official. "The captain has to gather information on the nature of the luggage or cargo if it is hazardous material; he also needs information on weight and balance," he said. If the pilot wonders about luggage content, he is not supposed to search it before the flight but could call the local police or customs, Marchand suggested.

17 SEPTEMBER 2015

SOURCE: **AIN**

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