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by Julio Vargas.

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

Supreme Court precedents related to the 2017 amendments and modifications to the civil aviation law and federal consumers protection law.

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In past deliveries we have been addressing several issues of the 2017 amendments to several provisions in Mexican legislation regarding consumer protection rights and the civil aviation laws, that have an impact in both domestic and international flights.

Several airlines that operate domestic and international flights decided to challenge such legal reform since they consider that it affects its constitutional rights including several international and bilateral treaties in which Mexico is part thereto.

After a year of administrative litigation, our Supreme Court has begin ruling on different cases and establishing the first precedents related to the interpretation of such in depth legal reform. In general terms, our highest court has sustained that all the amendments are within the Mexican constitutional frame. Such court precedents for the current moment are not binding, since it is required 5 uninterrupted precedent rulings all in the same direction, but undoubtedly reflect the Supreme Court 's position which constitutes a guidance to the lower courts and judges to be observed. Nevertheless and due to the amount of cases yet to be resolved, the possibility for the Supreme Court to overrule some of these first precedents exists, but that will depend on pending several arguments raised by different airlines counsel yet to be studied, that eventually may prevail.

Due to the extension of the aviation themes addressed by our Supreme Court, we will make brief and quick references to the ones that affect international air transport.

- 1.** Amendments related to indemnities and compensations due to delays and cancelled flights established in the civil aviation law are, in first instance, compatible with the Responsibility Limits system established in the Convention for the Unification of certain rules for the international air transport.
 - 2.** The obligations to: i) allow the passenger the use of the second flight segment; ii) return of the ticket price if the purchase is cancelled; iii) free transport of baggage within certain specifications, are all compatible with the Convention for air transport between Mexico and Perú.
- This means that the court would have to compare this provisions with other conventions in which Mexico is a part thereof, and resolve case by case.
- 3.** The policies related to baggage on international flights are subject in the first instance to the provisions established in international conventions.
 - 4.** The obligation for the airline to pay indemnities for causes set forth in the civil aviation law regarding the payment of indemnities in cases attributable to the airline does not violate the constitutional supremacy since it is sustained in the international provisions and conventions that regulate aviation matters being Mexico a party thereto.

- 5.** Our Supreme Court also established a precedent ordering on how the international regulations must be interpreted and applied by the judges in cases were the matter is also regulated in national regulations.

In this special and important ruling, court has ordered that in any case were international air transport regulations must be applied, the competent judge or court must have at hand the international convention deemed applicable and the civil aviation law and proceed to execute the following test in order to resolve the controversy.

- a. If in the case at hand exists or not international regulation.
- b. if in the case it exists simultaneously national and international regulations.
- c. in such event, if that “double” regulation has the same time, space, personal and material scope and in that case, if the applicable regulations assign different and incompatible legal consequences to the same hypothesis that impedes its simultaneous application.
- d. if the incompatibility of regulations is real and it cannot be superseded through interpretation rules.
- e. in the event that it has been confirmed that the regulations incompatibility exists, then the legal operator must apply all the applicable criteria to resolve regulations conflicts or contradictions, taking into account that in the case of international air transportation regulation the special rule will always be the one contained in the international convention that Mexico is part thereof, as established in our constitution, and;
- f. on the contrary and in the event of the absences of the special rule, then it must apply the Mexican civil aviation Law or any other legal source ordered in such law.

“After a year of administrative litigation, our Supreme Court has begin ruling on different cases and establishing the first precedents related to the interpretation of such in depth legal reform.”

6. Mexican federal congress has competence to regulate international air transport since the Mexican air space in which is rendered is considered a General Way of Communication in national territory.

7. The liberty of tariff principle that applies to air transport does not limits congress to obligate airlines to be abide by certain limits or conditions when establishing their tariffs for their service rendered or offered.

Our Supreme Court continues ruling additional issues related to domestic flights, that due to their length will be address in future deliveries.

There are still several cases pending and we may expect that with these Supreme Court rulings, the pending cases may be sent back to high courts to be resolved following the precedent guidance that has been established by our highest court.

Mexico launches \$7.4bn “Tren Maya” railway project.

Mexican President Andrés Manuel López Obrador has launched the Maya Train - an ambitious project to build a railway through five south-eastern states. At an indigenous ceremony near the ancient Mayan ruins of Palenque, he said this would help create hundreds of thousands of jobs. The 1,525km (950-mile) railway will link Palenque and the tourist resort of Cancún on the Caribbean coast. But opponents warn it could damage the region's important biosphere. A third of the planned route passes through pristine jungle, and the owners of the land, the Maya people, say they have not been consulted. But President López Obrador dismissed environmentalists' concerns, promising that “we won't uproot a single tree”. The four-year project is expected to cost up to \$7.4bn. https://www.bbc.com/news/worldlatinamerica46588042?intlink_from_url=https://www.bbc.com/news/topics/crr7mlg0vr2t/mexico&link_location=live-reporting-story. 17/12/2018.

Expectations of the railway sector after the closing of 2018.

After that in the January-September 2018 period, cargo traffic in the Mexican Rail System increased by 2% compared to 2017, the railway sector already has growing expectations towards the new year. As declared by Iker de Luisa, General Director of the Mexican Association of Railways (AMF), in general terms the railway sector is going well, the traffics and routes have been maintained in an orderly manner and will keep this line for 2019. <http://t21.com.mx/ferroviario/2018/12/21/expectativas-sector-ferroviario-cerrar-2018> 21/12/2018.

Migrants stuck in Tijuana dream of US as they celebrate uncertain Christmas.

Volunteers try to bring some cheer to Central Americans with traditional food and gifts, but fear and anxiety haunt the holiday, Throughout Tijuana, volunteers and organizations from around the city and across the border have also been doing their best to inspire holiday spirits. In front of the camp on Saturday, 25 cooks organized by chef Armando Rodiel were preparing Christmas paella for the migrants over wood stoves a feat that required 1,600 pounds of chicken and pork, 800 pounds of rice, 400 pounds of olive oil, three weeks of planning and one specially ordered seven-foot-wide paella pan. <https://www.theguardian.com/us-news/2018/dec/25/central-american-migrants-tijuana-christmas> 24/12/2018.

Auto industry worried over reopening border to used vehicles from US.

An auto industry leader has expressed concern that Mexico's northern border could be reopened to the indiscriminate importation of used cars from the United States. Guillermo Rosales Zárate, deputy general manager of the Mexican Automotive Dealers Association, said there is pressure to change the policy that regulates the importation of used cars even though “until today it has been successful” the pressure comes mainly from lawmakers and authorities in northern states. <https://mexiconewsdaily.com/news/industry-worried-over-reopening-border-to-used-vehicles/> 28/12/2018.

Irregularities detected in spending of 3 billion pesos in disaster relief.

The spending of over 3 billion pesos (US \$159 million at the time) from the national disaster relief fund Fonden in 2017 was administered imprecisely, lacked transparency and suffered irregularities, according to an internal report by the Secretariat of the Interior. The analysis looked at 10 disaster declarations in which funds were granted to rebuild roads, water, marine, tourism and education infrastructure. Seven of the declarations were issued in the states of Veracruz and Oaxaca in the aftermath of a hurricane and a series of earthquakes. The OIC also found “imprecise follow-up and supervision of activities related to the allocation” because the governments of both states failed to follow new rules. <https://mexiconewsdaily.com/news/irregularities-detected-in-spending-of-3-billion-pesos/> 30/12/2018.

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