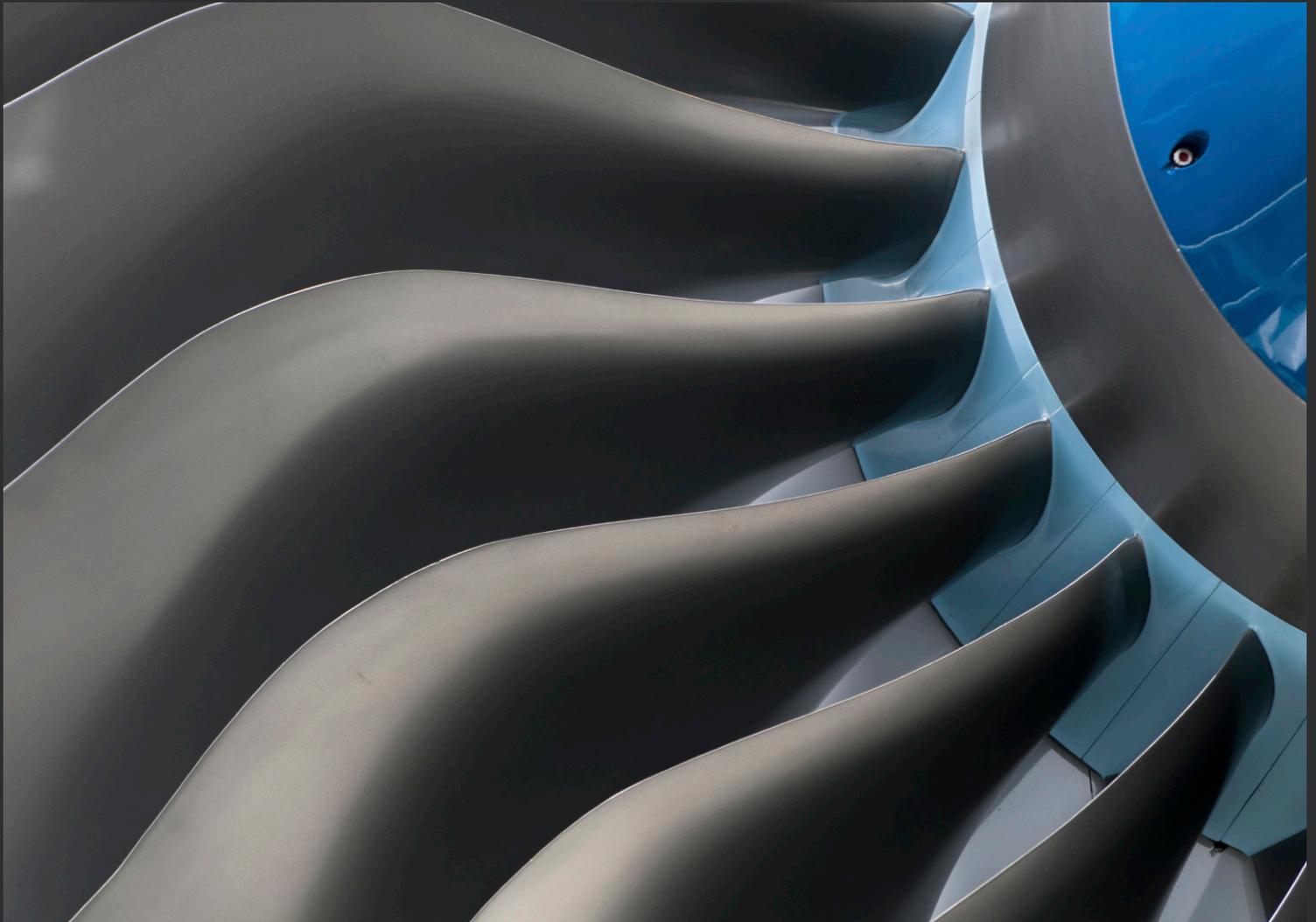


COELUM

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NEW CLOTHES,

As we initiate a new year, we thought that Coelum could use a facelift in order to maintain its modern and attractive format. Along with our web page –which has also been dressed up and which we invite you to visit–, Coelum initiates 2011 with the same content and concept but only wearing a new outfit that we hope our readers will find attractive. Happy New Year!

COELUM Pronunciation: 'che-l&m, is Latin for airspace or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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Enforcement of court orders and changes needed in the legal framework.

by Juan Antonio Tiscareño

In a country ruled by law, the legal authority has the capacity to enforce its laws, and to punish those people, who without right, refuse to comply with them, causing damage to the public interest, and a detriment to the common good. This article discusses some relevant issues concerning the noncompliance of civil court orders, when such noncompliance has its origin in a conscious resistance by a person or group of people who does not obey them. It will also analyze the legal consequences of that conduct, and the necessity to drastically amend the laws related to the enforcement of civil court orders.

Unfortunately, it is a widely and common practice in many parts of the world - and Mexico is no exception -, that people oppose a legal authority's mandates, whatever they may be, when they consider for some reason that these mandates are unfair. There are cases, in which the authority has to employ the use of force to make its mandates effective against people who act in defiance of authority. What happens when a person, conscious of the mandate of a court, refuses by all means possible to abide by a mandate? Is there a punishment for such resistance? In Mexico the legal framework on this matter is not sufficiently regulated, as we will see.

“In a country ruled by law, the legal authority has the capacity to enforce its laws, and to punish those people, who without right, refuse to comply with them...”

Statutory definition of the crime

The first thing that is important to determine is the statutory definition of the criminal offense that was outlined in previous paragraphs. For example, the Federal District Crime Code¹ place this crime in the chapter related to “*disobedience and resistance of particulars*”, however we will not discuss the crime of *disobedience* as it refers to an insubordination against a legitimate mandate of an authority that forces a particular person to do something. We will only focus on the crime of resistance because it refers to the specific conduct that we want to analyze.

Thus, the crime of resistance is committed by a person that, “*using emotional or physical violence, opposes a function of a public authority or its agents, or resists the enforcement of a mandate that complies with all legal requirements.*”²

1.- We will only make reference to Federal District Crime Code due to practical reasons, but similar definitions can be found in most of the crime codes of the states of Mexico.

2.- See article 282 of Federal District Crime Code

The definition of the crime of resistance seems plausible since it includes any kind of resistance or opposition (even when it is peaceful). The problem is that the penalty may vary from one year to five years in prison, according to the circumstances. With this scheme, the perpetrator can easily handle the process without being in prison by using his right of paying for bail, considering that in Mexico if the crime does not provide for a penalty of five years or more it is not considered a severe crime. For that reason I think it is urgent to increase the penalty established for this crime, so that it may be considered as a serious offence, and any potential perpetrator would be deterred from undertaking this type of conduct.

Lack of framework for the compliance of court orders

Stepping aside from the problem of the penalty of the crime of resistance, both the judicial system and the citizens have to face a dramatic situation: The absence of a proper legal framework to guarantee that a civil court order could be enforced in case of resistance. It is very serious indeed that a situation of this nature is not sufficiently regulated. The problem is that currently there is no appropriate coordination between judges and police forces in charge of enforcing court orders, because the police forces depend, in legal terms, on the executive branch and not on the judicial branch. So when the police forces receive a court order, they request instructions and authorization from their superior, that normally is a commanding officer with no previous knowledge of the case under which the order was issued. In practice, the interested party in the compliance of the order will have to contact the commanding officer in order to facilitate the support of the police forces, if needed, notwithstanding that there is no legal basis to act in such form and there is no obligation defined in the law for the commanding officer to meet the request of the interested party. In case of doubt, the commanding officer would have to talk with the judge and clarify things; however this can take days if not weeks. Obviously this situation will cause an unnecessary delay in implementing the court order because the police forces will have to wait for the instructions of their commander, who may or may not put the judicial order as a priority task according to its agenda, regardless of the intrinsic importance of the court order.

From my point of view there are at least two different ways to resolve this impasse:

- Create a special police force that would be part of the judicial branch.
- Amend the legal framework, in order to grant the judges the authority to give instructions directly to the police forces.

As we can see, both options have the same objective: to provide the judicial system with the necessary resources to enforce their mandates. Until the problems analyzed in this article are solved, the authority and effectiveness of court orders will remain in doubt.

Rights and Responsibilities of Passengers in Aviation Transport Service.

by *Alejandra Llopis* *

Because of the operational uncertainty of the Mexican Airlines, arising in the last couple of months, it is important that passengers are fully informed of the rights that both Mexicana and International legal framework grant them in certain cases for example: flight has been cancelled or is subject to a long delay, or passenger has been denied boarding on a flight for which he holds a valid reservation. The main objective of this article is to analyze some of the rights of passenger provided by both Regulations in domestic flights in accordance to Mexican Aviation Law and International flights in accordance to the International Treaties.

a) Tickets

Article 37 of the Mexican Civil Aviation Law Regulations provides that tickets should establish the rate¹ for the route authorized by the Ministry of Communications and Transports (Secretaría de Comunicaciones y Transportes), conditions of the hired service, liabilities of carrier, passengers' rights etc.

Tickets are full proof of the service contract and acceptance of all terms and conditions established in such contract, as well as specific conditions of the hired service, such as flight date, schedule, origin and destination.

It is important to mention that passengers have the right to change their flight, time, date and destination if the request is at least two hours prior to flight departure, as long there are seats available on the new flight. Any changes or modifications approved by each carrier and made voluntarily by passengers will be subject to conditions and charges by such carrier. Most carriers establish that once the fee for hiring the service for air transport is paid, there will be no refunds, compensation or reimbursement.

b) Delayed and Cancelled Flights

Carriers have the right to cancel, reschedule, terminate, postpone or delay any flight, without previous notice for safety purposes.

In case that a carrier is forced to cancel a domestic flight, article 52 of the Mexican Civil Aviation Law establishes that its obligation will be to reimburse each of the passengers the ticket cost

**IN COLLABORATION WITH JESSI SABA.*

1.- Rate is the amount that passengers must pay to the carrier for the contract of air transportation services.

and in the case of compensation, the compensation payment cannot exceed 25% of the cost of the ticket. This means that the reimbursement is indicated to be the amount corresponding to the portion of service not rendered.

“Carriers have the right to cancel, reschedule, terminate, postpone or delay any flight, without previous notice for safety purposes.”

There are some causes in which carriers are not forced to make compensation or refunds to the passenger for a delayed domestic flight or cancellations, due to unforeseeable circumstances or emergencies under article 39 of the Mexican Civil Aviation Law Regulation. These include weather conditions, wars, terrorist acts, causes attributed to airports, aircraft agencies or authorities, fires, floods, earth movements, earthquakes, natural disasters, epidemics and other restrictions caused by quarantine announcements and acts from any authority. These causes are considered not to be the responsibility of the carrier.

There are plenty of reasons that can make it impossible for flights to arrive on time; some of these are bad weather, air traffic delays, and mechanical issues. These situations are hard to predict and often beyond carriers' control. For International flights the Convention for the Unification of Certain Rules for International Carriage by Air, Montreal, 28 May 1999, (which Mexico is part since 2003) (The Convention) establishes under article 19 the following:

“The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures”.

Also, the Convention mentions under article 22, that in case of damage caused by a delay as specified in article 19 described above, in carriage of people, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights².

“There are some causes in which carriers are not forced to make compensation or refunds to the passenger for a delayed domestic flight or cancellations, due to unforeseeable circumstances or emergencies under article 39 of the Mexican Civil Aviation Law Regulation.”

2.- Special Drawing Rights (SDRs) are international foreign exchange reserve assets. It is currency used by the International Monetary Fund (IMF).

For the aforementioned, carriers do not guarantee their schedules, and every passenger should realize this situation when planning and buying their ticket. If the problem is the weather or air traffic control, all flights will probably be late and there is nothing the carrier can do. In case of cancelled flights, carrier should rebook passengers on their first available flight. (with no additional charge).

c) Baggage

In case of damages or lost of passenger's baggage in case of domestic flights, the carrier will have to compensate under the terms of article 62 of the Mexican Civil Aviation Law which establishes that the amount of the compensation cannot exceed 40 days of minimum wage salary current at time in Mexico.

One important thing here is that carrier will be exempt from all type of responsibility when damage derives from overweight baggage or damage has been done by passenger.

In the case of International flights, the Montreal Convention lists the limits of liability under article 22 in relation to baggage and it establishes that in carriage of baggage, the liability of carrier in the case of destruction, lose, damage or delay is limited to 1,000 "Special Drawing Rights" for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if it is required.

d) Insurance

Carriers' major responsibility, in domestic and International flights, is to ensure passengers during the journey between boarding the aircraft and landing at their destination in exchange for payment of the appropriate rate and fees; another responsibility is to inform passengers about the insurance coverage and their right to claim the corresponding payment compensation in case of damage . This insurance could be for death (funeral expenses), injuries, temporary, permanent or total disability (medical attention) and lose or damage to baggage.³

In case that passenger suffers some damage (physical or personal), during the air transport service of a domestic flight, the carrier should be forced to compensate the passenger as the terms established in article 1915 of the Federal Civil Code and the result will be multiplied by three (3) as in accordance to the provisions of article 62 of the Mexican Civil Aviation Law.

3.- Article 65 of Mexican Civil Law Regulation.

Carrier should not be able to compensate passengers in cases where damage results from the carrier's fulfillment of laws, regulations or government stipulations, or when passengers have violated any provision.

Damages to passenger should be claimed within one year, starting from the day after damage. If the claim is filed out of this period established under article 66 of the Aviation Law, then this will exempt the carrier from the obligation to pay any type of compensation.

“Carriers’ major responsibility, in domestic and International flights, is to ensure passengers during the journey between boarding the aircraft and landing at their destination in exchange for payment of the appropriate rate and fees...”

Therefore we can conclude that in situations where passengers suffer damages that were caused directly by a carrier in accordance with the terms of the Mexican Civil Aviation Law, it is advisable for the passengers to request the refunds in writing, including the ticket as a proof of the service previously hired and to file their claims in terms established under the Law; in that way carriers should pay the compensations without any excuse. Each carrier has a maximum amount of compensation for passengers and third parties; this limit is established in the insurance policies that every aircraft must keep on board.

If the amount for compensation is not established in the insurance policy, payments will be done in accordance with the terms of Mexican Labor Law; for International flights, Montreal Convention establishes the amount of compensation for passengers.

US returns México's aviation certification to category one.

The FAA (United States Federal Aviation Administration) today raised the aviation certification of Mexico back to category 1, because Mexico now meets the standards of the International Civil Aviation Organization (ICAO). Four months after the FAA put Mexico into category 2, this Administration has decided to place Mexico in the top level again based on the significant progress that Mexican aviation made over the past few months. From now on Mexican airlines can add flights and services to the United States market. *El Financiero*. 03/December/10.

Bancomext will auction Mexicana aircraft.

The National Bank of Foreign Trade (Bancomext) will exercise its warranty to recover the credit granted to Mexicana de Aviacion. As part of this, Bancomext will sell the aircraft that the company pledged to ensure payment. The debt so far is 780 million pesos and Bancomext is already in negotiations with aircraft lessors to sell them the nine Mexicana aircraft. *CNNExpansión*. 03/December/10.

Mexicana is out of Bankruptcy proceedings.

Javier Lozano, labor secretary, said that Mexicana is starting to fly again in the second half of January. First, the airline will make pre-operational flights on its diverse air routes; principally to the United States, in order to maintain its presence in the global market. The Secretary confirms that there is no set date for the company to start formal operations; it is therefore not possible to start ticket sales. However, the passengers that already have tickets with the airline could use them on the pre-operation flights. *El Financiero*. 09/December/10.

Drugs confiscated from Aermexico flight attendants in Spain.

The national police of Spain confiscated 140 kilograms of cocaine from three employees of a Mexican airline. According to the communication, the flight attendants were from an Aermexico flight from Mexico City. The arrested persons carried company documents that identified them as employees of the airline. *El Universal*. 09/December/10.

Mexico and the European Union signed aviation agreement.

Mexico and the European Union signed a civil aviation agreement in order to harmonize the bilateral agreements between both parties and establish the legal framework for air services. The agreement updates the relationship between Mexico and the twenty seven countries in respect of air services. The agreement modifies the bilateral agreements existing between these countries. It will however not affect the actual traffic rights already in existence. *El Financiero*. 15/December/10.

In this month extract was prepared by Jessi Saba, Roberto Najera and Vera Garcia.

Mexicana has more than 24 thousand creditors.

The Ifecom (Federal Institute of specialist in bankruptcy proceeding) published the final list of creditors of Compañía Mexicana de Aviación (CMA). The creditors are close to twenty-four thousand three hundred seventy-four people. However, the judgment does not mention the total amount of debt. According with the document, the final list contains the objections made by the creditors, in accordance with article 128 of the Bankruptcy Law. The principal creditors are the seven thousand, two hundred seventy workers, Bancomext (National Bank of Foreign Trade) for pledge-secured and mortgage loans, ASA (Auxiliary Airports and Services), Banorte. Also IMSS (Mexican Institute of Social Security), SAT (System of Tributary Administration) for fiscal payments. Finally, the document mentions the ten thousand six hundred & four creditors in which are included international airports, national air terminals, foreign airlines, lessors, hotels, etc.

El Financiero. 15/December/10.

Mexicana goes forward with Payment Agreements.

Airports and Auxiliary Services (ASA) could be collecting a total of 73% of the debt that Mexicana de Aviación owes to ASA. In order to collect this, ASA will exercise their rights over the guarantees and the remaining part will be collected according to the conciliator's proposal. Juan Molinar Horcasitas, Secretary of Communications and Transport explained that Mexicana's major creditors have guarantees to collect the owed debt.

El Norte. 12/December/10.

Aviacsa delays its return because of debts.

Aviacsa will not be able to reinstate operations until the payment of the corresponding taxes is made, an amount of almost 400 million pesos. The Ministry of Communications and Transport has been very clear to the owners of the airline that if they do not pay the taxes, they will not be allowed to restart operations. Even though the airline's aircraft and crew have all needed permits, the airline must liquidate the debts. If the company doesn't reach an agreement with all of its creditors by mid-January, the company will be declared in bankruptcy. *El Norte. 21/December/10.*

Mexicana must offer viable and economic tariffs, says the Ministry of Communications and Transport.

The tariffs that Mexicana de Aviación will offer, once they restart operations must be economical but viable for the company. The SCT is not willing to compromise on any restart date, because the company is still under a proceeding of Concurso Mercantil. *El Financiero. 21/December/10.*

ASUR expects to handle a million passengers during the holiday season.

Southeastern Airports (ASUR) is expecting around a million passengers for this holiday season. With the suspension of Mexicana de Aviación, many other companies increased the number of operations, thus compensating for Mexicana's shutdown. It is important to note that even with the increased frequencies to Cancun there is still a reduction of around 6%-8% in the number of national seats. ASUR, in response to Mexicana's shut down, advised that they are going to have to ask the airlines for more guarantees to avoid a situation where they would be left unprotected. *El Financiero. 22/December/10.*

In this month extract was prepared by Jessi Saba, Roberto Najera and Vera Garcia.

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