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The Transportation of Foreign Passengers
without required Immigration Documents.

Misael Arellano P. 01-03

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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The Transportation of Foreign Passengers without required Immigration Documents.

by *Misael Arellano.*

In this edition of Coelum we will analyze the enforceability of the Immigration Law and its Regulations in regards to the stated amount of a fine imposed on the carrier by the transportation of passengers without required immigration documents, as from November 9, 2012.

New Immigration Legislation

The new Immigration Law was published on May 25, 2012 and entered into force on the day following its publication in the Official Gazette. Some articles however, related to the procedure, requirements and types of immigration permits for the admission of foreign citizens became enforceable from November 9, 2012.¹

On September 28, 2012 the Ministry of the Interior published the Regulations to the Immigration Law in the Official Gazette; this legislation entered in full force on November 9, 2012 as stated in article First of its Transitory Articles. The Regulations to the Immigration Law states the specific procedures and characteristics for the observance of the obligations declared in the Immigration Law for the international transit of persons. These include the requirements and criteria for the issuance of visas; the immigration status of foreign persons in Mexico; the protection for immigrants in transit; the migratory administrative procedure in regards to the regulation, control and verification, and the supported return of foreign persons.

Precedents

Before May 26, 2012 the Population General Law and its Regulations were the legal basis for the imposition of immigration fines caused by the transportation of foreign passengers without required immigration documents and it stated a maximum amount of five thousand pesos (380 USD approximately)² for each passenger so transported:

Article 132. The air carriers and shipping companies carrying foreign passengers into the country without valid immigration documents will be punished with a fine up to five thousand pesos, notwithstanding that the passenger be rejected and the carrier takes care of all expenses of the transportation to the place of origin.

Moreover, the Population General Law stated the maximum amount of a fine to be “one thousand days of the minimum wage”, for any other violation to the law or its regulations that were not stated on *Chapter VIII. Sanctions* of the Population General Law. This general precept was used to adjudicate any other mayor violation of the law with the higher amount used for larger breaches of the law.

1.- SECOND of the TRANSITORY ARTICLES of the Immigration Law: Article 10; sections I, II, III and VI of the article 18; article 21; Chapters I and II of Title Fourth; last paragraph of the article 74; articles 101 and 102; article 117; last paragraph of the article 112; articles 126 and 127, and articles 149, 157 and 158 of the Immigration Law, will not enter into force until the Regulations of the Law enter into effect.

2.- Article 132 of the Population General Law; abrogated by the Immigration Law.

The amounts and the fine calculation procedure

As of November 9, 2012 the fixed amount for a fine imposed on carriers for the transportation of passengers without required immigration documents was abrogated by the entrance into full force of the Regulations to the Immigration Law. Then a new legal provision was stated in regards to this issue in article 248 of these Regulations:

Article 248. The companies providing the international transport by land, sea or air that fail to observe the requirements stated in article 44 of the Law³ and move foreign passengers into the country without valid the immigration documents required for entrance to Mexico, will be sanctioned with a fine of from one thousand to ten thousand days of the general minimum wage in Mexico City, notwithstanding that the passenger be rejected and the carrier takes care of all expenses of the transportation of the passenger to the place of origin.

As referred above, the amount of ten thousand days of minimum wage in Mexico City becomes from the maximum amount for any major violation to the Population General Law before May 26, 2012 to the minimum amount for a fine caused by the transportation of passengers without required immigration documents as from November 9, 2012.

On the other hand, the calculation procedure for any fine listed in the *Title Seventh. Sanctions of the Immigration Law*, was stated in article 138, as follows:

The Institute⁴ will impose the sanctions referred in this law⁵ within the limits referred for each section, based on the gravity the breach and degree of responsibility of the offender, considering:

- I. The socioeconomic status of the offender.*
- II. The external conditions, background of the offender and means of implementation.*
- III. The recurrence of the obligations breach.*
- IV. The amount of the benefit, profit or loss or damage originating from the breach of obligations, and*
- V. The stature of the offender and its career in services, in case of authorities different to the Institute.*

With the analysis of the article 138 of the Immigration Law, the purpose of the legislation was to distinguish between small and large and between regular and low cost carriers who may have very different operating costs and therefore should not pay same amounts for same violations to the law; bering in mind the circumstances of the each offender.

3.- Article 44 of the Immigration Law: The companies conducting the international transportation of passengers, maritime or by air, must verify that all foreign passengers have valid and in force documentation required for the entrance to Mexico or to final destination country.

4.- The National Immigration Institute.

5.- The Immigration Law.

“...Every sentence must be according to the offense sanctioned and to the legal order affected...”

The legality of the norm in regards to the calculation of the amount of a fine

In Mexico, the article 1 of the Mexican Constitution states that all persons will have all human rights and all guarantees to protect such rights, the exercise of which cannot be restricted or suspended in any way, excluding specific cases and situations duly stated in the Constitution. The first paragraph of article 22 states that:

“...Sentences of death, mutilation, infamy, branding for life, flogging, beating, any kind of torture, excessive fine, confiscation of property, and any other unusual or extreme sentence are prohibited. Every sentence must be according to the offense sanctioned and to the legal order affected...”

In that sense and in respect to that stated in article 138, section IV of the of the Immigration Law; it is evident that the transportation of a passenger without the required immigration documents for the entrance to Mexican soil does not cause in any way a damage of an amount located between the one thousand and ten thousand days of minimum wage in Mexico City -5,000 to 50,000 USD approximately- thus resulting in an excessive fine when considering the following facts related to the passenger rejection:

1. The passenger arrives to an entrance point to Mexico by their own cost.
2. The passenger does not enter to Mexico at any time.
3. The very little time or use of human resources is used for the inspection of the passenger's immigration documents required for the entrance to Mexico by the immigration officers.
4. All expenses caused following the passenger rejection, to the time of the flight departure for the execution of the rejection, are paid by the carrier.
5. All expenses caused for the transportation of rejected passengers to the place of origin, or to any country to which the passenger may be accepted, are covered by the carrier.

From the above analysis, is evident that the new immigration new immigration normativity violates the prohibition of excessive fines stated in the Mexican Constitution and legal principles described above; generating the obligation of involved authorities, within the scope of its power, to promote, respect, protect and warrant the all stated rights of the carriers and involved persons, as well as to prevent, investigate, punish and remedy these violations to their rights in the terms established by the referred legislation.

First Aerospace Development Center started.

The Conalep Aerospace Center for Specialized Technical Development (CADTE) has commenced preparing skilled manpower and offering business training courses. Uribe Francisco Paniagua, the state director of the National College of Professional Technical Education (Conalep), said that Mexico's aerospace industry grew 17 percent a year, and that Baja California saw an increase of 25 percent. He explained that the CADTE allows companies to hire skilled labor that is certified in aerospace manufacturing, through precision machining training, quality management and aeronautical certification. *El Informador. 02/June/2013.*

PNI Will Require 350 Billion Pesos: SCT.

"In less than 30 days the National Infrastructure Plan (PNI for its name in Spanish) must be completed and will be presented by the president, Enrique Peña Nieto" said Communications and Transport Minister, Gerardo Ruiz Esparza. The head of the Ministry also stated that the program will require an investment of 350 billion pesos in order to be able to fulfill the 105 commitments already made by President Peña Nieto. The main targets are the development of the Lázaro Cardenas port and the Mexico City Airport. *El Universal. 04/June/2013.*

AICM handles 12 Million People in First Five Months of 2013.

According to Mexico City Airport authorities, 12.6 million travelers were handled during the first five months of 2013, over 500 thousand more than in the same period of 2012. The airport reported 146 thousand landing and take-off operations, 7.2% more than the same period of the previous year. Even though May operations are still preliminary and not official data, the airport authorities foresee important growth this year, both in operations and passengers carried. *El Universal. 05/June/2013.*

Aerospace Exports Reach Record.

The Bank of Mexico reports an 83% increase in national exports of aviation related parts and other products when compared to the first quarter of 2012. Total sales reach over 197 million dollars, compared to 108 million for the same period in 2012. A key aspect for the growth of the industry is the development of the Bajío area, which has been modernized and fitted for the challenges that rise ahead. According to the Ministry of Economy, the main markets for development of the industry are USA, United Kingdom, El Salvador and France. *Reforma. 12/June/2013.*

In this month extract was prepared by Vera García, Mauricio Castillo, Raúl Barrios and Diego García.

Aircraft Repossessed in Monterrey.

As part of a regulatory operation in Nuevo Leon to review the legal residence and possession of aircraft, the Tax Administration Service (SAT), seized 27 airplanes and a helicopter in Monterrey. The agency explained that this operation was made on June 17 under the framework of the shares of foreign trade control scheduled for 2013, and that another operation of the same nature took place at the Toluca International Airport on May 27 and 28. *El Universal. 18/June/2013.*

New E-Jet Family versus Smaller C-Series.

However tempting it is to compare Embraer's launch orders for the new E-Jet E2 with Bombardier's lack of orders here for the C Series, the companies are aiming at different markets. But there is an overlap that could prove crucial in the longer term. Embraer launched its three-aircraft E-Jet E2 family with 365 orders and other commitments anchored by its traditional regional-airline customer base. *Aviation Week & Space Technology. 24/June/2013.*

Boeing Launches 787-10 as A350 Enters Flight Tests.

Following the successful initial airborne maneuvers of Airbus A350, experimental test pilots Peter Chandler and Guy Magrin elicited immense relief and joy in Toulouse on June 14. But the A350's first flight just three days ahead of this year's Paris air show also may well mark the end of an important chapter in aviation history. The new Airbus long-haul aircraft, along with the Bombardier C-Series, are likely to be the last all-new, large commercial aircraft from Western manufacturers in a very long time. *Aviation Week & Space Technology. 24/June/2013.*

Airbus and Boeing – Battle for Aviation Future.

The Paris Air Show marks a great success for the two giants in the aeronautical industry. Airbus and Boeing completed multibillion Euro sales each with sales of 52 billion for the European company and 50 billion for the American. Airbus received 90 requests for the new A350 from airlines that include Air France, Singapore Airlines and United; Boeing received 50 confirmed requests plus 52 provisional orders from British Airways and United Airlines. The future of both companies rely on the new models, the 787 Dreamliner and the A350, both very similar in passenger capacity (around 330 passengers) and range (15 000 kilometers). *El Economista. 24/June/2013.*

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