

# COELUM

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The latest ruling of the  
Mexican Supreme Court  
in regards to Human  
Rights.

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## 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.

# The latest ruling of the Mexican Supreme Court in regards to Human Rights.

by Antonio Vázquez

On June 6 and 10, 2011, two constitutional amendments were published in the Federal Official Gazette that significantly modified the importance of human rights in Mexico. Since that date, these amendments have also changed the nature of the *Amparo* procedure as we knew it. We should remember that the *Amparo* in Mexico is the applicable procedure for the constitutional control of all actions of authority, which include judgments of any nature. The *Amparo* procedure is under exclusive jurisdiction of the country's federal courts (such as District Courts, Collegiate Circuit Courts and of course, the Nation's Supreme Court of Justice). This author commented on these amendments in the September 2011 Edition of Coelum. The published amendments included an important incorporation of human rights. Since that amendment, the term "rights" also included human rights recognized in the Constitution and International Treaties. In addition, the *pro persona* principle was introduced. This means that in case of doubt, the most favorable interpretation of a person's rights shall prevail.

The text of the Article one of the Constitution provides that: *"All individuals will have the human rights recognized by this Constitution and the international treaties to which the Mexican State becomes a party. All regulations related to human rights will be interpreted in accordance with the Constitution and with the international treaties related to the subject. The wider protection to the individual will prevail."*

It is very important to add that the concept of human right is applicable not only to individuals, but also in all those cases in which in accordance with its nature, it may be compatible with corporations' rights (Vgr. The right to a due process of law; The right to protect the reputation). In these cases, a company doing business in Mexico is entitled to defend and to claim the protection of its rights through the *Amparo* procedure as an individual could do before Mexican Courts. Based on this wide criteria, all what will said in this brief lines is applicable to entities as well.

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As consequence of this specific incorporation of human rights in the Constitution and the specific reference to the international treaties to which the Mexican State becomes a party, a practical conflict of legal provisions appeared before the Mexican Courts, where different criteria were applied: In some cases the Collegiate Circuit Courts (which commonly rule in last instance almost all legal procedures in Mexico) decided that the Constitutional regulation of human rights should prevail over the international treaties and in other cases, the decision was the opposite. Therefore, these discrepancies in the interpretation in recent jurisprudences of the Collegiate Courts were submitted to the Supreme Court of the Nation to be analyzed. The correct interpretation of Article one of the Constitution and the hierarchy of the international treaties versus the Mexican Constitution on human rights matters was adopted on September 3rd. 2013. In the following paragraphs I will

explain the main characteristics of this ruling. It is important to mention that the ruling on this criteria, and the final text of the jurisprudence has not yet been published. The latest review by our firm of this upcoming publication took place on October 1st. We reviewed the complete text of the discussions of the Justices of the Supreme Court and summarized the main ideas that sustain the new criteria, which are as follows:

*“In certain cases, the human rights clauses contained in international treaties could prevail over those Constitutional rights when these treaties give more legal protection to the individuals.”*

1.- The criteria has been adopted as consequence of the thesis contradiction case number 293/2011 among the opposite resolutions of the First Collegiate Court on Administrative and Labor matters of the 11th Circuit and the 7th Collegiate Civil Court of the 1st Circuit. The appointed Justice that prepared the project was Justice Zaldivar Lelo de Larrea.

2.- The new criteria states that the human rights established in the international treaties in which Mexico is party have the same hierarchy as the Constitution, but if this last regulation limits some of these rights, this limitation should prevail. This last exception was criticized by Justice Cossío (the only Justice who voted against the draft of Justice Zaldivar), because according to Cossio’s opinion, this means an express acceptance that the Constitution prevails over the international treaties.

3.- In certain cases, the human rights clauses contained in international treaties could prevail over those Constitutional rights when these treaties give more legal protection to the individuals. This is an interesting criterion, but not enough to confirm that the principle of *pro persona* will prevail in all cases. This is confirmed by the express petition made by Amnesty International to the Justices of the Supreme Court in which this organization asked the Justices “to confirm the effectiveness of *pro persona* principle, by which the applicable regulation will be the one that gives more favorable results to the protection of the individual in case of a contradiction between the Constitution and international human rights treaties.”

4.- The jurisprudence of the Inter-American Court of Human Rights (*Corte Interamericana de Derechos Humanos*) not only in those cases in which Mexico acted as party, but also in all cases in which Mexico is not party, may be applicable to Mexican Courts. This is an important new criteria in which the Supreme Court in fact modifies a different criteria originally adopted by the Supreme Court in 2011.

In our opinion, this kind of discussion related to the human rights will continue in the future. This is one of the important effects of the Constitutional amendment of 2011. Unfortunately in this case, we expected that the Supreme Court would go further in its interpretation and confirm expressly that the human rights regulated in the Constitution and the international treaties are at the same hierarchy level. This did not happen, so we should wait for further decisions in regards to this important matter.

## **Improving Pilot Monitoring.**

Informal industry working groups called Active Pilot Monitoring (APM) are producing data-rich study to convince airlines that deficient pilot monitoring skills are a safety threat. These groups are conformed by 20 organizations which objective is to create effective tactics in which pilots could have a big picture view of what is happening on the flight deck and with this simple tactics safety would be increase on commercial flights. *Aviation Week. September 02, 2013.*

## **Boeing and Airbus would start to make “lite” versions of airplanes.**

For more than 15 years Boing and Airbus have competed in the market of manufacture airplanes, now they are making two new upcoming models that are a “lite” version of their best selling models. These new two models the 787 Dreamliner from Boing and A350 from Airbus will cost around 15 billons each to get them off ground. *The Economist. September 05, 2013.*

## **Latin America remains drastically underserved by low-cost airlines.**

Latin America provides huge growth opportunities for low-cost carriers given the region’s expanding middle class and miniscule LCC penetration rate outside the two largest domestic markets. The existing small field of six LCCs are best positioned to benefit from the anticipated growth and leverage their first mover advantage. Four of the carriers are eyeing initial public offerings (IPOs), which could give them the cash to accelerate expansion in their home markets and regionally. Latin America’s LCC sector is now concentrated in only three countries – Brazil, Mexico and Colombia. The other 18 countries that comprise Latin America (excluding the Caribbean) account for about 35% of seat capacity but, remarkably, do not have a single local LCC. *USA Today. September 06, 2013.*

## **ASUR: Passenger Traffic Increases 11.8%.**

Grupo Aeroportuario del Sureste (ASUR), the first privatized airport group in Mexico and operator of Cancun Airport and eight other airports in southeast Mexico, as well as a 50% JV partner in Aerostar Airport Holdings, LLC, operator of the Luis Muñoz Marín International Airport in San Juan, Puerto Rico, today announced that total passenger traffic for August 2013 increased by 11.8 % when compared to August 2012. This announcement reflects comparisons between August 1 through August 31, 2013 and 2012. Transit and general aviation passengers are excluded. *Aviation News. September 07, 2013.*

## **ICAO Council endorses emissions deal.**

The International Civil Aviation Organization (ICAO) Council has agreed to a compromise solution on the introduction of global market based measures (MBMs) to tackle aviation emissions. The council accepted the principle of regional emissions trading schemes and agreed to have a single global MBM for aviation to be implemented from 2020. The principles for a global MBM should be adopted at ICAO’s assembly in 2016. With the ICAO Council’s agreement, the EU will implement an adapted ‘Stop the Clock’ exemption until 2020 that will impose ETS on parts of a flight using EU air space. *Aviation Week. September 09, 2013.*

*In this month extract was prepared by Vera García, Mauricio Castillo and José Manuel Muñoz.*

## **Plane begins construction with Mexican parts.**

Alfredo Nolasco Meza, General Manager of Bombardier in Mexico, stated yesterday that the arming of the first C-Series has already begun and it did it with Mexican soul, despite the six months delay. He said that all doors are made in Queretaro. In words of Nolasco, it is the best of his class. It is going to be constructed in Mirabel, Canada with parts from all over the world, including the set of doors from Mexico. They have not fixed the price yet, but he assures that the range will compete with the Airbus 319 and the Boeing 737, and also with Embraers made in Brazil. *The Economist. September 16, 2013.*

## **Volaris won 15.28% in trading debut on the Market.**

The Volaris shares increased 15.28% in trading debut in the Mexican market (BMV because of his acronym in Spanish), to 17.88 pesos. In the global mix offer the shares in the local market and in the American market, the airline rised 5,145 million pesos. Volaris offered a total of 331.73 million shares, equivalent to 32.8% of the capital of the company. About the sold values, 21.5% had been placed in the BMV and 78.5% in the international markets, through the ADS. *The Economist. September 18, 2013.*

## **In Runway, Binational Airport.**

Tijuana, BC. The enterprise Otay-Tijuana will invest 85 million dollars in the binational air terminal in San Diego that will be connected with Tijuana´s Airport, which construction is expected to begin in the last trimester of 2013 with the name of The Gateway to Las California´s. Enrique Valle Alvarez Manager of the enterprise with headquarters in La Joya, California, commented that the project was contemplated almost 30 years ago, because of the lack capacity to growth of the airport of San Diego, California. *The Economist. September 18, 2013.*

## **Russian airplanes Super Jet- 100 begin regular flights in Mexico.**

The Mexican airline Interjet announced the beginning of the regular flights with the new Russian passenger airplanes Sukhoi Super Jet 100(SSJ-100)on domestic routes. The Mexican company bought 20 airplanes SSJ-100 and also acquired 10 more leased airplanes with buying option. By Interjet request, the airplanes had the numbers of chairs reduced from 108 to 93, in order to increase the space between passengers and also to provide comfort to the passengers. *RIANovosti September 19, 2013.*

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