

COELUM

Monthly Digital Publication by
ABOGADOS SIERRA Y VAZQUEZ

August 15, 2014 year 09 | No. 04

SECURITY
CHECK

Are they illegal? New fines under the Migration Law for International Air Carriers, related to the Transportation Foreign Passengers without acceptable Immigration Documents.



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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.

Are they illegal? New fines under the Migration Law for International Air Carriers, related to the Transportation Foreign Passengers without acceptable Immigration Documents:

by Antonio Vázquez.

In our Coelum of July 2013¹, my colleague Misael Arellano detailed the amounts and the basis for the fines contained in the new Immigration Law² and the Regulations of this Law related to the requirements and criteria for the applicable fines for the transportation of foreign passengers without the required immigration documents. This new legislation replaced the Population General Law and its Regulations which originally were the legal basis for the imposition of immigration fines caused by the transportation of foreign passengers without appropriate immigration documents.

In order to explain our comments and thoughts about the new legal provisions in regards this matter, it is important to cover the most relevant articles of the Migration Law applicable to our discussion:

Article 44 of the Migration Law establishes the obligation of air international carriers to verify that its passengers should carry valid and in-force immigration documents as follows:

“Article 44.- 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 Mexican Territory or to final destination country”

The fines that should be imposed in case of infringement of article 44 are stated in article 248 of the Migration Law, as follows:

“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 Law and move foreign passengers into the country without valid the immigration documents required for entrance to Mexico, will be sanctioned with a fine in the form of one thousand to ten thousand days of the general minimum wage in Mexico, City, notwithstanding that the passenger is rejected and the carrier takes care of all expenses of the transportation of the passenger to the place of origin.”³

As you can see, the minimum fine stated in the Migration Law for this type of cases is \$67,290 Mexican Pesos (around US\$5176.15 American Dollars) and could be increased up to \$672,900.00 Mexican Pesos (around US\$51,761.53 American Dollars) for each passenger who is found not to have the correct immigration documents. In addition to the fine, the carrier must take care of the expenses of the transportation of the passenger to their place of origin.

Finally, article 138 of the Migration Law states the criteria that should be followed by the Mexican authority to determine the amount of the fine to be imposed. These are the criteria:

- 1.- See “The Transportation of Foreign Passengers without required Immigration Documents” by Misael Arellano. Coelum July 2015 year 8 No.03.
- 2.- The new Immigration Law was published in the Official Gazette on May 25, 2012, however the procedure, requirements and types of immigration permits for the admission of foreign citizens became enforceable on November 9th 2012. The Regulations of the Immigration Law entered into full force on November 9th 2012.
- 3.- The applicable general minimum wage per day in Mexico City in 2014 is 67.29 Mexican Pesos: Approximately US\$5.17 American Dollars per day, with an estimated exchange rate of \$13 Mexican Pesos per Dollar.

“Article 138.- The institute will impose the sanctions referred in this law within the limits referred for each section, based on the gravity of 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 breach of obligations.*
- IV. The amount of the benefit, profit or loss of damage origination from the reach of obligations.*
- V. The stature of the offender and its career in services. In case of authorities different to the institute.”*

“The fines stated in the Migration Law are considered tax credits, so its regulation should be in accordance with the general principles of tax contributions.”

As you can see, the fines to be imposed are extremely severe.

The fines stated in the Migration Law are considered tax credits, so its regulation should be in accordance with the general principles of tax contributions. In regard to this, article 31-IV of the Political Constitution of the United Mexican States establishes the proportionality and equalization in taxation. The proportional taxation is a system of taxation in which the rate of taxation is uniform, no matter the size of the income. The term equalization is applied to a similar process of leveling, to cause to correspond, or be like in amount or degree, as compared with something⁴ Both principles, proportionality and equalization are related to the fairness in taxation.

One of the main legal issues of the applicable system contained in the Migration Law in respect the fines to be imposed on those carriers that transport foreign passengers without acceptable migration documents, is that the amount of the fines may vary dramatically. This means that for the same defaulted obligation, a different amount of fine can be imposed. In addition, the applicable fines are not equivalent with the defaulted obligation of verifying that the passenger should carry the appropriate migration documents. Even with the lower fine, the amount to be imposed seems to be considerably higher in respect to the defaulted obligation.

In addition to the above, article 22 of the Political Constitution establishes that no excessive fines are acceptable in our legal system. This concept of “excessive fine” is directly involved with the proportionality principle and the fairness of the amount to be imposed that has been briefly explained before. In fact, there are specific jurisprudence criteria in regards to “excessive fines” which from our point of view is applicable to this case.

With this general idea, we may sustain that although the fines established in the Migration Law are legally regulated, they may be considered as illegal as long as they go against the basic tax principles and basic concepts of these matters.

Since the new legal provisions became effective one and a half years ago, our firm has challenged a number of migratory fines in respect to this specific issue. Many considerations sustain our legal claims in respect the legal validity of these fines. Nowadays, many of these procedures have been ruling and fortunately the criteria of the Mexican Courts, up to this stage, have been favorable to the interests of our clients and a number of fines have been annulled. Usually, this is the main effect of a deficient legal provision.

4.- Black’s Law Dictionary. Sixth Edition. Pg 536.

Mexico: The perfect drone test ground.

David Weekly, founder of Drone VC and head director of Facebook's product division has stated that Mexico is the perfect location to test and validate the commercial applications of non-tripulated aircraft, better known as drones. The reason for this statement is that in order to operate drones in Mexico, a permit from Mexico's Aviation Authority would suffice, as long as it is proved that the drones fly at a maximum height of 150 meters above ground level. The introduction of drones for commercial purposes was banned by the FAA authority in the United States, thus Mexico may be the place to experiment, in order to prove FAA regulations wrong, or to provide lessons in the usage of drones. *Vuelamex.com. July 02, 2014.*

Mexico Eases Restrictions on Non-Revenue Bizav Flights.

Foreign-based operators flying aircraft on a charter certificate but conducting private, non-revenue operations to Mexico have been given a reprieve from cabotage rules imposed in April by Mexico's aviation agency, Dirección General de Aeronáutica Civil. The new rules, which are effective retroactively to June 3, "clarify that operators with aircraft listed on a charter certificate are once again allowed to operate those same aircraft to Mexico as private, non-revenue flights". NBAA, the FAA and other industry groups had "expressed great concern" following the restrictions, since they effectively prevented any aircraft placed in a charter management company structure from operating privately in Mexico. The restrictions were implemented following a high-profile accident. *AINonline. July 03, 2014.*

Mexico exempted from new US air travel rules.

Mexico has not been included on the list of nations that are being asked not to allow cellphones and computers that cannot be powered up on to flights bound for the United States. The directive from the Transportation Security Administration (TSA) affects flights only from Europe, Africa and the Middle East. According to news sources in United States, the TSA has concerns that terrorists in Yemen and Syria with ties to al-Qaeda have figured out how to turn cellphones into undetectable bombs. *The Guadalajara Reporter. July 11, 2014.*

Farnborough: Bombardier's new jet has difficult take-off.

At last year's Paris show, Bombardier was triumphant about imminent test flights of its long-awaited C-Series aircraft. But the test schedule had to be pushed back a few months. At Farnborough, the questions have been about what caused a C-Series engine failure during a ground test in May. Test flights have yet to restart, despite the company saying it hoped to have the aircraft airborne again by the end of June. The \$4bn (£2.3bn) aircraft program is supposed to be a game-changer for the Canadian company, taking it into a market for longer-range aircraft. *BBC News. July 16, 2014.*

Mexico City's Airport beyond saturation.

The International Airport of Mexico City (AICM for its initials in Spanish) will reach its maximum capacity by the end of the year with the handling of more than 32 million passengers. Alfonso Sarabia, General Director of the airport, has stated that it is imperative to establish a solution to the over saturation problem. The director implores the federal government to take action and announce a solution to the problem as he states how "tight" they are, as airlines are using bigger planes with the same slots, and as the demand for travel has skyrocketed. *Milenio. July 18, 2014.*

Mexico's Secretariat of Communications and Transportation will generate the conditions necessary for a safer aviation.

The Director of the Civil Aeronautic General Direction, Alexandro Argudín, announced the action plan of the Secretariat of Communications and Transportation (SCT) to generate the conditions necessary for safer aviation in Mexico. Through this announcement he said that an international certification system will be implemented for the airlines and for ground handling service providers, starting on the first of January 2015, which will oblige them to comply with safety standards in their operations. *Radio Formula. July 22, 2014.*

Open skies to airlines at Mexico.

The Association of Airline Pilots (ASPA) rejected a policy of open skies to foreign carriers when the national airline industry is going through an “alarming” situation. In the last decade aviation has grown only 1 percent annually and has reported decreases in fleet size, staff numbers and passengers carried. According to an association analysis, based on figures from the DGAC, in the period from 2003 to 2013, the commercial airline fleet decreased 2 percent and national airline personnel decreased by 36 percent. Likewise, the number of passengers carried by domestic airlines fell to 2.4 percent. In the same period however, foreign airlines increased the number of passengers carried by 2.4 percent. *El Universal. July 22, 2014.*

USA and Mexico in talks to liberalize air services.

The USA and Mexico are in talks to liberalize their bilateral air service agreement that would allow more carriers to gain coveted rights to operate flights between the two countries. The most recent meetings between the two countries took place in Mexico City during the last week of May. Liberalization of air services between the USA and Mexico would be a boon to airlines in both countries which now face restrictions when launching new air service. The air transport agreement between the USA and Mexico was first signed in 1960 and was last amended in 2005. On each city pair, each country can designate a maximum of two carriers to provide service. The exception is on flights between USA and 14 Mexican cities, where each country can designate up to three Airlines. *Flightglobal. July 24, 2014.*

Malaysian Airlines’ flight MH17 (3). AEA: debate on airspace security guidance for airlines urgently needed.

The Association of European Airlines (AEA) calls for an urgent international debate about airspace security guidance for airlines. The downing of Malaysian Airlines’ flight MH17, which AEA strongly condemns, and recent flight cancellations to Tel Aviv have all demonstrated that a discussion is needed about how risk assessments are made by national authorities. Safety and security have always been the airlines’ top priority. European airlines are fully committed to making flying even safer. In preparing their flight plans, airlines should be able to rely on independent risk assessments rather than on information provided by governments and air traffic control authorities alone. *Avionews. July 25, 2014.*

The Mexican Air Fleet has still not reached previous levels.

The Mexican aircraft fleet has not yet recovered to the level reached prior to the international financial crisis of 2007-2008. According to information from the Civil Aeronautic General Direction (DGAC), the commercial air fleet now has 282 registered aircraft, which is 18% less than the 345 planes registered in 2006. On an international scale, the air fleet in Mexico is well below other countries, given that some individual airlines own more planes than those of all the airlines in Mexico. *Milenio. July 28, 2014.*

The 5th freedom of the air to assure lower tariffs.

The Mexican General Direction of Civil Aviation (DGAC for its initials in Spanish) has advised that they are looking forward to implementing the 5th freedom of the air in Mexico, in order to allow the unlimited access of foreign companies to Mexico. This Air “openness”, as expressed by the Federal Government would benefit the aviation business as it would lower both tariffs and costs. There would therefore be more competition among airlines both domestic and foreign, which would result in better prices. Additionally, the implementation of 5th freedom would, in effect, generate more jobs as the country accelerates its air-connectivity with the world. *Milenio. July 29, 2014.*

Airlines want guidance on conflict airspace.

Global airlines will push to get “neutral information” on whether to use or avoid airspace over conflict zones at Tuesday’s meeting of the UN aviation agency and other airline bodies, a European-based airline industry source said. The UN agency, the International Civil Aviation Organization (ICAO), has invited the heads of the airline industry, airports and the world’s air traffic control networks to the Montreal meeting to discuss what needs to be changed to ensure that airliners are flying in secure airspace after the downing of a Malaysian airliner over Ukraine on July 17 took 298 lives. *Airline Industry Today. July 29, 2014.*

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