

# A Proportionality Test of Religious Freedom and the limitations to the Freedom of Transit on grounds of National Security and Public Order.

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Contributors  
P. 05

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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.

# A Proportionality Test of Religious Freedom and the limitations to the Freedom of Transit on grounds of National Security and Public Order.

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Security filters, invasive screenings, constant surveillance and custody agendas have become standard procedures the moment one steps foot in an airport, all underpinned on national security and prevention. After 9/11 and recent terrorist attacks worldwide, it comes natural to believe that this filters are nothing but necessary to assure our freedom to transit, but how often do these measures contravene other human liberties and rights?

*“In order to accept that an intrusion to a human right is legal and viable, a “proportionality test” amongst the two fundamental rights that clash at a specific time must be made”.*

In recent events, a passenger was prevented from boarding his flight in Mexico City’s International Airport for refusing to remove his turban in accordance with his religion. In light of these events, there is a clear clash between religious freedom and the limitations within our freedom of transit to safeguard national security.

In order to accept that an intrusion to a human right is legal and viable, a “proportionality test”<sup>1</sup> amongst the two fundamental rights that clash at a specific time must be made. This “proportionality test” consists of screening the limitation to a fundamental right through three standards:

- (i) is the limitation/intrusion to a human right the only suitable measure to do so?;
- (ii) are these limitation measures the least invasive to other human rights?; and
- (iii) are there other viable security measures possible to avoid limitations to other human rights?

Thus, we must first understand the regulatory framework in the United Mexican States concerning security measures within an airport. In accordance with article 43 of the Rules of the Civil Aviation Law (*“Reglamento de la Ley de Aviación Civil”*), and article 152 section III and article 154 of the Rules of the Law of Airports (*“Reglamento de la Ley de Aeropuertos”*), all passengers must be inspected and registered with the use of metal detectors arches, manual metal detectors or physical inspection at the security inspection points. Regarding secondary inspection, the rules establish that “passengers shall be examined at the boarding gate, through physical inspection.”

It is imperative to note though, that no regulation within these rules or within the National Program of Airport Security (*“Programa Nacional de Seguridad Aeroportuaria”*) detail specific treatment or procedures for the physical examination of people that for religious purposes wear garments or clothing that may not be removed in public, nor do these regulations establish specific treatment for cloth removal in any case. In these cases, these measures are arbitrarily made by the concessionaire of security points of each airport in accordance with their experience. This lack of regulation is certainly the first step for trouble. On that same note, in accordance with the Human Rights Reform of 2011, all authorities must act within the human rights limitations of dignity and respect and in accordance with Article 1 of the United Mexican States Constitution, which, among other things, states:

*“In the Mexican United States all individuals shall be entitled to the privileges and immunities granted in this Constitution.*

1.- This proportionality test regarding human rights violation has been practiced and defined by most modern constitutional and human rights specialized courts and incorporated into the Mexican legal order by jurisprudence and precedent case law of the Mexican Supreme Court titled “Depth of the Constitutionality analysis and use of the proportionality principle. Its application in relation to human rights”- Amparo en revisión 202/2013. (*“Intensidad del Análisis de Constitucionalidad y uso del principio de proporcionalidad. Su aplicación en relación con los derechos humanos”*- Amparo en revisión 202/2013).

*Such privileges and immunities shall not be restricted or suspended, but in the cases and under the conditions established by this Constitution itself.*

*Rules relating to human rights will be interpreted in accordance with this Constitution and international treaties on human rights, favoring at all times the widest protection to the person.*

...

*Discrimination based on ethnical or national origin as well as discrimination based on gender, age, disabilities of any kind, social status, health condition, religious opinions and beliefs, preferences of any kind, civil status or any other reason which attempts against human dignity and which is directed to either cancel or restrain the individuals' privileges and immunities, shall be prohibited".*

Having detailed the omissions at a regulatory level for the screening of passengers and the limitations of the authorities actions in accordance to human rights limitations by the Constitution, let us perform the "proportionality test" when religious freedom is contravened by the limitations to the freedom of transit for national security purposes.

1) Is the limitation/intrusion to a human right the only suitable measure to do so?

Requiring someone to remove their clothing, whether religious or not, for security reasons is clearly against the human right of dignity and in no way sustainable under the freedom of transit. However, this argument may admit grounds to be contravened when there is eminent threat that illicit substances or artifacts may be hidden within that clothing, posing a danger to national security and public order. Thus, under said circumstances, requiring the removal of clothing could be valid.

2) However, is this limitation or measure the least invasive to other human rights?

Let us analyze if the removal of clothing is the least invasive procedure to assure that no illicit substances or artifacts are hidden within. The inspection of the garment through a metal detector is valid and possible in first instance. If such measure is not sufficient to determine a possible threat, then a physical screening of the garment or clothing is much less invasive and possible than requiring its removal.

Thus, at this point, requiring the removal of clothing does admit less invasive security methods and we may not justify as legal or valid requiring the removal of garments.

3) Are there other viable security measures possible to avoid limitations to other human rights?

As stated on the second step regarding less invasive methods to limit this right, there are at least two other possible security measures: physical inspection and metal detector screening. However, and as stated in the regulations above regarding secondary revisions at a public area; is being screened in public the only measure? Whilst a regulatory omission, authorities are obliged to perform their actions in accordance with Article 1 of the Federal Constitution which prevails over any other conflicting internal regulation. Thus, requiring the removal of garments or clothing in a public area does not pass this "proportionality test".

The purpose of the above exercise is to provide guidance as to how two fundamental rights can be in dispute and how to assess such dispute. In this specific case, religious freedom would prevail as long as there are less invasive measures for the inspection of the religious object or garment. If there are no other measures for inspection, and the security of others might be compromised, the removal and inspection is absolutely necessary. It is of vital importance for authorities to specify how inspections would be made, whether physical or through metal detectors, in public or privately, etc., as the lack of regulations create legal uncertainty, mistrust, and violation to other fundamental rights. The lack of regulations is not the exclusive source of controversies, as some airports lack the infrastructure and technology to admit less invasive methods of inspection as well as proper training of the personnel, therefore, human rights might be violated constantly.

## **NASA says it will build a quieter supersonic passenger jet.**

NASA announced Monday it has awarded a \$20 million contract to Lockheed Martin to develop a preliminary design for a quiet demonstration passenger aircraft designed to fly faster than the speed of sound. The piloted test aircraft would use so-called Quiet Supersonic Technology, or QueSST, to create a supersonic "heartbeat," a kind of soft thump instead of the annoying sonic booms usually associated with supersonic planes. Depending on funding, NASA said it expects the design and build phase for this half-scale first version of the aircraft to last several years, with the flight campaign starting around 2020. [www.edition.cnn.com](http://www.edition.cnn.com). March 01, 2016.

## **The HondaJet Receives Certification in Mexico.**

Honda Aircraft Company announced today that the HondaJet has received type certification from the Civil Aviation Safety Authority of Mexico, the Dirección General de Aeronáutica Civil (DGAC). The world's most advanced light jet also will make its debut at the 2016 Aero Expo, Mexico's most prominent business aviation event. The trade show is being held at the Toluca International Airport from March 16 to 18 where a production HondaJet will be on static display. "Receiving aircraft validation in Mexico is an important milestone for Honda Aircraft Company, paving the way for the start of HondaJet deliveries in Mexico," said Honda Aircraft Company President and CEO Michimasa Fujino. "We are excited to respond to the interests of customers in Mexico, and we will begin with the first delivery in a few weeks." [50skyshades.com](http://50skyshades.com) March 16, 2016.

## **Boom: A plane faster than Concorde with fares a quarter of the price?**

A Colorado startup wants to build supersonic passenger planes faster than Concorde but with fares a quarter of the price -- and Virgin Galactic has just got on board. The Boom airplane would travel at Mach 2.2 -- more than twice the speed of sound and 2.6 times faster than any other airliner -- and fly from New York to London in 3.4 hours. That's San Francisco to Tokyo in 4.7 hours or Los Angeles to Sydney in six. That transatlantic trip cuts the standard seven-hour journey by more than half. With a round-trip price tag of \$5,000 it's not exactly "affordable" travel, but for the world's business elite, it's a steal. [edition.cnn.com](http://edition.cnn.com) March 24, 2016.

## **Startup Plans to Develop Supersonic Airliner.**

Richard Branson once offered to buy British Airways' Concorde before they were retired. Now his Virgin Empire is involved with a Silicon Valley-backed startup that wants to develop a small supersonic airliner. Boom Technology plans a 40-seat aircraft cruising at Mach 2.2 for the same ticket price as subsonic business class. [www.aviationweek.com](http://www.aviationweek.com) March 25, 2016.

## **Cheap Oil Boosts Business Case for Older Aircraft.**

While carriers may not like to admit it, low fuel prices are having a noticeable influence on the fleet strategies of many of them. A traditional refrain of airlines is that fleet planning is aimed at the long term, so fluctuations in oil prices should not affect such decisions. However, the current price slump has proven so sustained that this is clearly not always the case. [aviationweek.com](http://aviationweek.com) March 29 2016.

## **Boeing's Commercial Jet Unit Is Manufacturing an Artificial Crisis.**

Last week, BCA CEO Ray Conner warned of job cuts necessitated by fierce price competitions from Airbus. "Their biggest weapon that they're using in the competitions today is price," Conner told BCA employees. "They are attacking us with price in every single campaign. And as a result of that, you know, we're being pushed to the wall." That's right. Airbus, BCA's only real competitor, is using price to compete. Who knew? But this wasn't the first warning BCA has sounded this year. In early February, Conner warned that job cuts were needed to lower costs, to allow the company to regain lost market share. As of last week's announcement, numbers range from 4,000 to 8,000 job cuts, primarily in the executive and management ranks. Best of all, the company's backlog is extremely robust – 5,758 jetliners. This, too, undercuts Conner's notion of price pressure as a chronic problem. The prices of jets included in a firm commercial backlog are set, and generally not negotiated downward. While backlogs aren't always completely secure, the company now has 7.5 years of production at current rates with known pricing. *forbes.com March 29, 2016.*

## **Brussels Airport Reopens for Limited Service.**

Brussels Airport reopened on Sunday for three "symbolic" flights by Brussels Airlines following days of negotiations between airport authorities and police over new security measures. A Brussels Airlines departure to Faro, Portugal, marked the first flight operation since March 22, when a pair of bombs that detonated in the airport's departure area killed 16 people and a separate bomb at a Brussels subway station killed another 16. Brussels Airlines subsequently flew to Turin, Italy, and Athens, after passengers underwent additional security measures approved by federal police. *www.ainonline.com April 03, 2016.*

## **De Juniac to leave Air France-KLM to lead IATA.**

We'd be willing to bet that nearly every single commercial flight you've ever been on (if not all of them) was aboard Air France-KLM chairman and chief executive Alexandre de Juniac will replace Tony Tyler as the next director and CEO of the International Air Transport Association, the airline said Tuesday. De Juniac indicated to the Air France-KLM board of directors that he would accept IATA's offer to lead that organization at its general meeting, scheduled for June 1 to 3 in Dublin. The airline said it has prepared a plan to appoint a successor to assume de Juniac's post by August 1 and that it has already started the process of identifying a suitable executive with the help of an international recruitment consultancy. *www.ainonline.com April 05, 2016.*

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