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## **Changes into legislation and case-law, affecting interests of airline carriers**

### **I. Resolution of the Constitutional court dd. 20 December 2011 No. 29-P**

On the 20th of December 2011 the Constitutional court of the Russian Federation has declared the Resolution, having sufficient impact on the formation of tariffs for airline transportation of children in the age of up to 12 years.

The proceedings have been initiated upon constitutional claim of several airlines (CJSC "Airline company "Polet", OJSC "Airline company "UTair"). The Airlines have challenged the provisions of subsection 3 section 2 article 106 of the Air code, establishing special tariffs for transportation of children in the age of up to 12 years.

Initially the airlines have sued Russian Federation for redress of losses, incurred by them in result of applying this tariff. The claims have been laid down by the courts of first and appellate instances.

From the airlines' standpoint, expressed in the claim, reviewed by the Constitutional court, the imposition of obligations to apply special tariffs for transportation of children in the age of up to 12 years upon the airline carrier de facto means assignment of social obligations of state and is therefore subject to reimbursement.

The Constitutional court has clarified, that the uncertainty of legislative language in wording of the said tariff, namely the fact that it is not denominated as subsidy, underlies the problem at stake. Since the tariff is not a subsidy, airlines cannot apply provisions of section 5 article 790, that set forth reimbursement of losses, incurred by the airline carrier as result from applying statutory subsidies for transportation of passengers or cargos.

Despite the fact, that the disputed provisions of subsection 3 section 2 article 106 of the Air code have been recognized conforming to the Constitution, the Court has emphasized, that the opaque wording of the tariff leads to "unlawful restriction" or the airlines' right for freedom of commercial activity.

Additionally, from the point of view of the Constitutional court, the application of a special (de facto – subsidy) tariff without corresponding reimbursement of losses on the part on the state distorts the balance of public and private interests in the sphere of airline transportation.

In connection thereto, in the operative part of the Resolution, the Constitutional court had obliged the legislator to introduce relevant changes, necessary for upholding the public and private interests balance.

Hence, in the nearest future we may await enacting amendments into tariff legislation regarding airline transportation of children in the age of up to 12 years. Such amendments are likely to allow airlines for reimbursement of losses, incurred as result from applying such tariff.

## **II. New Rules on organizing air traffic**

On the 30th of December the Ministry of justice has registered the Order of the Ministry of Transport dd. 25th of November 2011 "On approval of federal aviation rules "Organization of air traffic in the Russian Federation" (hereafter – "Rules").

The goal for introducing the Rules is the harmonization of delegated legislation, regulating air traffic, introduction of essential terms, detailed regulation of dispatcher handling of flights over the territory of the Russian Federation.

The Rules contain vast amount of detailed technical regulations, being aimed at practical application. The emphasis is put on organization of air traffic security. The regulations of the Rules are clustered into 12 sections as follows:

- general provisions;
- basis of air traffic organization;
- air traffic handling;
- dispatcher handling;
- incoming and departing aircrafts, airfield dispatched handling;
- air traffic handling on the basis of surveillance system;
- handling with means of AZN-K;
- flight-informational handling;
- emergency alerting system;
- co-ordination in process of air traffic handling;
- emergency cases, dangerous situations, equipment failures, unpredictable situations at aircraft handling;
- ensuring security of flights at flight handling;
- appendix. Terms and definitions.

The Appendix to the Rules incorporates terminology, being used also in the Air code, other subordinate legislation acts.

The Rules are obligatory for all users of air space of the Russian Federation and shall enter into force 60 days after publication. On a separate note it should be stressed, that as of the date of this material preparation the Rules have not been yet published.