

J. Y. Interpretation No.313 (February 12, 1993) *

ISSUE: Shall Article 46 of the Regulation Governing the Management of the Business of Civil Aviation be declared unconstitutional?

RELEVANT LAWS:

Article 23 of the Constitution (憲法第二十三條); Articles 87, Subparagraph 7 and 92 of the Civil Aviation Act (民用航空法第八十七條第七款及第九十二條); Articles 29, Paragraph 1 and 46 of the Regulation Governing the Management of the Business of Civil Aviation (民用航空運輸業管理規則第二十九條第一項及第四十六條).

KEYWORDS:

imposition of administrative fines (科處行政罰鍰), administrative law (行政法).**

HOLDING: The imposition of administrative fines upon any person who violates an obligation under the administrative law involves a restriction on the rights of such person. Therefore, the conditions triggering the sanction and its amount shall be set forth by law. In case the law authorizes the promulgation of a

解釋文：對人民違反行政法上義務之行為科處罰鍰，涉及人民權利之限制，其處罰之構成要件及數額，應由法律定之。若法律就其構成要件，授權以命令為補充規定者，授權之內容及範圍應具體明確，然後據以發布命令，始符憲法第二十三條以法律限制人民權利之意旨。民用航空運輸業管理規則雖係

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regulation to supplement such triggering conditions, the contents and scope of such authorization shall be concrete and clear so that the regulation promulgated according to such law may be in compliance with Article 23 of the Constitution, which requires any restriction on the rights of the people to be set forth by law. Though the Regulation Governing the Management of the Business of Civil Aviation (hereinafter the “Regulation”) are promulgated in accordance with Article 92 of the Civil Aviation Act (hereinafter the “Act”), for an administrative sanction imposed under Article 46 of the Regulation by reference to Article 87, Subparagraph 7, of the Act against a violation of Article 29, Paragraph 1, of the Regulation, the basis of its legal authorization is not clear, and, therefore, not in compliance with the above-mentioned principle. It shall become null and void no later than one year after this interpretation is issued.

REASONING: The imposition of administrative fines upon any person who violates an obligation under the administrative law involves a restriction on

依據民用航空法第九十二條而訂定，惟其中因違反該規則第二十九條第一項規定，而依同規則第四十六條適用民用航空法第八十七條第七款規定處罰部分，法律授權之依據，有欠明確，與前述意旨不符，應自本解釋公布日起，至遲於屆滿一年時，失其效力。

解釋理由書：對人民違反行政法上義務之行為科處罰鍰，涉及人民權利之限制，其處罰之構成要件及數額，應由法律定之。若法律就其構成要件，

the rights of such person. Therefore, the conditions triggering the sanction and its amount shall be set forth by law. In case the law authorizes the promulgation of a regulation to supplement such triggering conditions, the contents and scope of such authorization shall be concrete and clear so that the regulation promulgated according to such law may be in compliance with Article 23 of the Constitution, which requires any restriction on the rights of the people to be set forth by law. The Regulation was promulgated pursuant to the authorization under Article 92 of the Act. Article 29, Paragraph 1, of the Regulation provides: "The civil aviation business shall not carry passengers who do not hold an ROC visa or entry permit to the ROC." Said Paragraph was added by the Ministry of Transportation and Communications on September 15, 1988, in response to the lifting of Martial Law. A civil aviation business violating this rule is subject to punishment under Article 87, Subparagraph 7, of the Act by virtue of Article 46 of the Regulation. However, there is a lack of clear authorization for such punishment, which, therefore, is not

授權以命令為補充規定者，授權之內容及範圍應具體明確，然後據以發布命令，始符合憲法第二十三條以法律限制人民權利之意旨。民用航空運輸業管理規則雖係依據民用航空法第九十二條授權而訂定，惟其中第二十九條第一項：「民用航空運輸業不得搭載無中華民國入境簽證或入境證之旅客來中華民國」，係交通部於中華民國七十七年九月十五日修正時，為因應解除戒嚴後之需要而增訂。民用航空業因違反此項規定而依同規則第四十六條適用民用航空法第八十七條第七款處罰部分，法律授權之依據，有欠明確，與前述意旨不符，應自本解釋公布日起，至遲於屆滿一年時，失其效力。至民用航空法第八十七條第七款規定：「其他違反本法或依本法所發布命令者」，一律科處罰鍰（同法第八十六條第七款亦同），對應受行政罰制裁之行為，作空泛而無確定範圍之授權，自亦應一併檢討，併此指明。

in compliance with the abovementioned principle. It shall become null and void no later than one year after this interpretation is issued. As to Article 87, Subparagraph 7, of the Act, which imposes administrative fines against “any other violation of this law or regulations promulgated pursuant to this law” (See also Article 86, Subparagraph 7), this provision contains a broad authorization without definitive scope with respect to the acts subject to such administrative sanction. Therefore, it should also be reviewed.