RESPONSES TO INFORMATION REQUESTS (RIRs)

08 February 2008

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Mexico: The possibility of filing an *amparo* lawsuit in order to request the setting aside or modification of a prison sentence for murder
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

In correspondence with the Research Directorate, an associate professor at the school of law of the National Autonomous University of Mexico (Universidad Nacional Autónoma de México, UNAM) who is also a researcher at the UNAM Legal Research Institute (Instituto de Investigaciones Jurídícas de la UNAM), stated that an *amparo* lawsuit can be filed in order to challenge a prison sentence for murder (Associate Professor 24 Jan. 2008; see also *La Jornada* 10 June 2005). The type of amparo filed is equivalent to a remedy to quash (remedy of cassation) in other legal systems (Associate Professor 24 Jan. 2008). This type of amparo is a direct (Associate Professor 24 Jan. 2008; see also Mexico 5 Feb. 1917, 107.III.a; Mexico 10 Jan. 1936, 114.III) "judicial amparo" (*amparo judicial* or *amparo casación*) (Zamora 2004, 267; Brewer-Carías Oct. 2007, 11). The court with jurisdiction to hear the case is the federal Collegiate Circuit Court (Tribunal Colegiado de Circuito de la Federación) (Associate Professor 24 Jan. 2008, ibid. 28 Jan. 2008; Mexico 10 Jan. 1936, Art. 158).

There is no limitation period for filing an amparo lawsuit in the case of a sentence involving a loss of liberty (Associate Professor 24 Jan. 2008; Mexico 10 Jan. 1936, Art. 22).

Through direct amparo, it is possible to obtain a full review of decisions rendered in a trial or an appeal (Associate Professor 24 Jan. 2008). Regardless of the nature of the alleged violation, direct amparo cannot be undertaken until the final decision is rendered or the sentence is pronounced (Mexico 10 Jan. 1936, Art. 161). Therefore, direct amparo proceedings concern a final decision, a final award or a ruling of a procedural nature that does not resolve the matter but that terminates it (Associate Professor 28 Jan. 2008; Baker 1971, 177).

Doctrine and case law set out the grounds for challenging a prison sentence and distinguish those grounds on a procedural (1 and 2) or substantive (3, 4 and 5) basis (Associate Professor 24 Jan. 2008; ibid. 28 Jan. 2008). Prison sentences may be challenged for the following reasons:

1. A procedural violation was committed during the proceedings that unduly limited the accused person's right to defend himself or herself and that prevented the accused from taking the necessary action to defend himself or herself (Associate Professor 24 Jan. 2008).

2. A procedural violation was committed during the proceedings that vitiated the sentence (ibid.).

3. The sentence does not respect the [translation] "principle of legality" because of an error in law (ibid.). In an amparo proceeding, the judge reviews the legality (*control de la legalidad*) of the decision (*Diccionario Jurídico Mexicano* 2004, 180).

4. The sentence is inconsistent (Associate Professor 24 Jan. 2008). According to Mexican law, that means that the content of the sentence is incompatible with what was presented to the judge during the proceedings because elements that were not debated are mentioned (ibid. 28 Jan. 2008; Mexico 10 Jan. 1936, Art. 158). The inconsistency can also stem from an error in the decision regarding one of the points raised during the proceedings (Associate Professor 28 Jan. 2008; Mexico 10 Jan. 1936, Art. 158).

5. The sentence is based on an unconstitutional law (Associate Professor 24 Jan. 2008).

The difference between an amparo lawsuit and a regular appeal is that the court with jurisdiction to hear an appeal is higher than the court that rendered the decision being challenged, while in an amparo lawsuit, only the federal judicial authorities, through the federal Collegiate Circuit Court, have jurisdiction, because amparo lawsuits deal with violations of constitutional guarantees (Associate Professor 28 Jan. 2008). Articles 14 and 16 of the Mexican constitution set out the principle of legality of decisions concerning citizens (Associate Professor 28 Jan. 2008; Mexico 5 Feb. 1917, Art. 14 and 16); in criminal cases, sentences can be reviewed based on the application of a law by a local judge (Associate Professor 28 Jan. 2008).

The effects of an amparo lawsuit

The effects of a positive decision in an amparo proceeding challenging a prison sentence for murder depend on whether the ground raised was procedural or substantive in nature (Associate Professor 24 Jan. 2008). If the violation is procedural, the amparo quashes all or part of the past proceedings and a *de novo* trial is held (Associate Professor 24 Jan. 2008; ibid. 28 Jan. 2008). However, if the violation concerns the merits of the case, the federal Collegiate Circuit Court can step in for the trial judge and order a sentence amending the decision, including acquittal (Associate Professor 24 Jan. 2008; ibid. 28 Jan. 2008). Someone charged with murder can thus regain his or her freedom following a positive amparo decision (Associate Professor 28 Jan. 2008). For example, Raúl Salinas, the brother of former Mexican president Carlos Salinas de Gortari was granted a direct amparo quashing a sentence of 27 years' imprisonment for murder (Associate Professor 28 Jan. 2008; *La Jornada* 10 June 2005).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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Internet sites, including: Amnesty International, Mexican Law Review.

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