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Possible Repatriation Of French Kidnapper Creates Opposition In Mexico, Raises Legal Questions

by LADB Staff

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Whether the Mexican Constitution or Mexico's obligations under international treaties has a higher priority emerged again with the case of Florence Cassez, a French citizen convicted of participating in a Mexican kidnapping ring. Despite a ruling by Mexico's Supreme Court (Suprema Corte de Justicia de la Nacion, SCJN) that Mexico's Constitution has a higher priority than international treaties, President Felipe Calderon is strongly considering a request from France to comply with a 1983 convention signed between Mexico and the European Union (EU) dealing with the repatriation of prisoners.

The Mexican Senate has overwhelmingly rejected Cassez's repatriation, and the government's human rights watchdog (Comision Nacional de Derechos Humanos, CNDH) has recommended that Mexico withdraw from the treaty altogether. Cassez was convicted in 2006 of participating in at least three abductions and sentenced to a 60-year prison term in Mexico. She was linked to a violent kidnapping organization known as Los Zodiacos, led by Cassez's then boyfriend Israel Vallarta Cisneros. The gang's victims included women and children, with at least one victim accusing her abductors of sexual assault.

Cassez claims that she is innocent of the charges against her and that she was merely an innocent bystander while Los Zodiacos carried out the kidnappings and subsequent torture of victims. But her arguments did not persuade the Mexican courts, which sentenced her to the equivalent of life in prison. Furthermore, Cassez's attorney argued that the case was filled with procedural problems and violated her right to due process. The government showed Cassez's arrest on television during a high-profile raid of the ranch owned by Los Zodiacos. But it was later revealed that the raid was staged and that Cassez had been detained the previous day. "The investigation's blunders gave ammunition to Cassez's defense lawyers," said the Mexico City daily newspaper La Jornada.

Having failed in her efforts to convince the courts of her innocence, Cassez then asked that she be allowed to serve the rest of her sentence in her home country, which would be allowed under the 1983 treaty. Cassez recruited French President Nicolas Sarkozy to advocate for her transfer to a French prison. Sarkozy discussed the issue with Calderon during a visit to Mexico City in early March (SourceMex, March 11, 2009).

After a series of consultations, the French president convinced his Mexican counterpart to consider a request to transfer Cassez to France. The two leaders agreed to create a joint commission to review the international agreements that would allow Cassez to be repatriated to her home country. Critics say Constitution has supremacy over international treaties Although Calderon made no promises, the mere possibility that Cassez would be allowed to return to her country stirred outrage in Mexico. Raul Carranca y Riva, a columnist for the Mexico City daily newspaper El Sol de Mexico, questioned whether it was legal under Mexican law to send Cassez back to France. He cited a 2007 decision

by the SCJN, which ruled that Mexico's Constitution takes priority over international treaties (SourceMex, February 21, 2007).

Carranca y Rivas said the Constitution legitimizes the laws approved by the Mexican Congress, which would also supersede international treaties. "As a consequence [of the SCJN decision], we have a very clear hierarchical order: the Constitution, the laws passed by Congress, and then international treaties," said the columnist. *La Jornada* made the same points using stronger words. "It would be unacceptable, given the current circumstances, for the Calderon government to allow Cassez to return to her country," the newspaper said in an editorial. "This would be an insult to Mexican society at a time when a surge in crime has planted deep fear and despair in the population." The CNDH raised concerns that a clause in the 1983 treaty allows the French government to make the sentence more lenient or even seek a pardon for Cassez. "This would set a regrettable precedent" that is contrary to Mexico's campaign to fight impunity and seek justice, said CNDH president Jose Luis Soberanes Fernandez. A solution, he said, would be for Mexico to withdraw from the treaty.

Syndicated columnist Sergio Sarmiento also raised concerns about the clause that gives France more flexibility. "The repatriation perhaps would not be as objectionable if we knew that France would commit to ensuring that Cassez completes her 60-year sentence," Sarmiento wrote in a column in the Mexico City daily newspaper *Reforma*. Sarmiento pointed out that Cassez has become a folk hero in her home country, which would make it difficult for the Sarkozy administration to commit to upholding the sentence handed down in Mexico. "There would be no shortage of politicians [in France] who would want to gain popularity by ensuring freedom for a victim of a Mexican police that many in France view as corrupt," he said. Senate says kidnapper should serve sentence in Mexico Many in Mexico view Cassez as a criminal who must be punished.

Many objections came from the Senate, which has jurisdiction over Mexico's international treaties. "She committed crimes here, so she should pay for them here," said Sen. Carlos Navarrete, floor leader for the center-left Partido de la Revolucion Democratica (PRD) in the upper house. Sen. Tomas Torres, a PRD member who serves on the justice committee (Comision de Justicia), warned Calderon against sending Cassez back to France for "political convenience." This, he said, "would send a negative message to Mexican society." The opposition Partido Revolucionario Institucional (PRI) also criticized Calderon's move to consider Cassez's repatriation. "Does the president really want her to go back to France against the will of the Mexican people?" asked Sen. Manlio Fabio Beltrones, PRI floor leader in the upper house. Even members of Calderon's Partido Accion Nacional (PAN) expressed opposition to sending Cassez back. Sen. Felipe Gonzalez said he would introduce a resolution in the Senate on behalf of his party objecting to her return to France. "Kidnapping is a crime of greed," said Gonzalez. "No one should be able to obtain economic gain by depriving others of their liberty." And PAN president German Martinez Caceres made a public statement expressing his party's position. "We should not open the door for impunity for such a serious crime," he said. But Foreign Relations Secretary Patricia Espinosa Cantellano said the goal of the binational commission considering the Cassez case is to ensure that she serves a proper sentence in her own country. "[The French] judicial system operates differently from ours," said Espinosa in a television interview. "That is why we have to create this space for negotiations." "[The commission] was given the near-impossible mission of finding a solution that preserves the interests of the Mexican justice system, the interests of the French justice system, the interests of kidnapping

victims, and the right for each person to be transferred to a prison in his country of origin, even when found guilty," Sarkozy acknowledged in a press conference during his visit to Mexico City earlier in the month.

In addition to Espinosa, Mexican members of the commission include deputy attorney general Juan Miguel Alcantara Soira, deputy interior secretary Geronimo Gutierrez, and representatives of the office of the presidency, the Secretaria de Seguridad Publica (SSP), and the Secretaria de Relaciones Exteriores (SRE). The French delegation, led by Foreign Minister Bernard Kouchner, includes a personal representative of Sarkozy, a member of the French judiciary, and Daniel Parfait, France's ambassador to Mexico.

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