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# Supreme Court Considering Several Cases that Would Uphold Civilian Court Jurisdiction in Military Violations of Civilian Rights

by Carlos Navarro

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Mexico's high court (Suprema Corte de Justicia de la Nación, SCJN) is considering a number of individual cases that would uphold an earlier decision to give civilian courts jurisdiction in cases where military personnel are alleged to have violated the rights of civilians.

The court is using the current session to consider 30 cases related to its July 2011 decision that initially allowed civilian courts jurisdiction over military violations of human rights ([SourceMex, July 20, 2011](#)). In that decision, the SCJN ruled that Mexico's judiciary branch was obligated to comply with international rulings barring the investigation and prosecution of human rights abuses under the military justice system. The Inter-American Court of Human Rights (IACHR) ruled in a 2009 case that military jurisdiction could not apply to any case in which civilians' human rights were violated.

## *Colonel ordered cover-up of murder of civilian*

In the first of these decisions, announced in early August, the court said a federal district judge should have jurisdiction over a case in which soldiers tortured and killed Jethro Ramses Sánchez Santana, an auto mechanic, at a military base in Morelos state in May 2011.

According to police records, Sánchez and Horacio Cervantes Demesa were detained after an altercation at a food fair in Cuernavaca. Sánchez had threatened to kill law-enforcement personnel if not allowed to confront the people with whom he had tussled. The army officers who took him into custody tortured and killed him.

The complaint charges Col. José Guadalupe Arias Agredano of covering up the crime by telling soldiers not to talk about it and ordering several to dump his body in the neighboring state of Puebla.

Col. Arias Agredano and two Army officers involved in the case—José Guadalupe Orizaga y Guerra and Edwin Raziél Aguilar Guerrero—have been in military custody awaiting trial in connection with Sánchez's death. The SCJN decision means that military courts will now have to cede the case to civilian tribunals.

In announcing its decision to allow civilian courts jurisdiction in the Sánchez case, justices agreed that a civilian court was the proper venue to hear the complaints against Col. Arias Agredano. "A soldier should never be judged by a military court when the victim is a civilian and their human rights have been violated," explained Justice Arturo Zaldívar.

## *Second case accuses Army officers of perjury, obstruction of justice*

A week after issuing the decision in the Sánchez case, the high court ruled that a second case should go to civilian courts. In this case, three military officers have been accused of perjury and

obstruction of justice. The officers allegedly planted a bag of marijuana in the vehicle driven by civilian Jesús Piedra Villalobos in the city of Morelia in Michoacán state to justify his detention.

The decision set a new precedent, with the justices determining that civilian courts should have jurisdiction in matters that are clearly civilian offenses and have little direct relation to matters of military discipline. In this case, the SCJN determined that the case should go to the Seventh District Court in Michoacán state and not to the tribunal associated with the Fifth Military Region, based in Jalisco state.

Justice José Ramón Cossío said the legislative branch also must play a role in ensuring that military personnel do not violate the rights of civilians. He noted that the Congress must make the necessary changes to Mexico's military code to comply with the decision handed down by the IACHR in 2009.

The challenge for the SCJN in considering the remaining 28 cases that have been brought to the high court is to remain consistent in its decisions. Indeed, there were some disagreements among the justices on the criteria to determine whether a case should fall within the jurisdiction of military or civilian courts. Justice Zaldívar expressed the sentiment of the majority, which was that any crimes committed by military that involve a civilian should be heard in a civilian court, regardless of the type of violation. But two SCJN members—Justices Sergio Aguirre Anguiano and Margarita Luna Ramos—cast dissenting votes in the first two cases. Aguirre Anguiano and Luna Ramos said they were not convinced that the two cases had to be heard outside a military court.

### *Military courts have given armed forces benefit of doubt*

Critics say there is ample evidence that military courts have tended to give the armed forces the benefit of the doubt in many cases where military personnel have been accused of a crime against civilians. The Mexican press and human rights advocates have obtained documents indicating that military prosecutors opened nearly 5,000 investigations into alleged violations of rights between 2007 and April 2012, but only 38 military personnel were convicted and sentenced.

The Secretaría de la Defensa Nacional (SEDENA) had no comment regarding the high court's rulings. But human rights organizations were pleased because the SCJN finally put into practice its July 2011 ruling. "This is a landmark decision of the Supreme Court," said Jose Miguel Vivanco, Americas director for Human Rights Watch (HRW). "Military jurisdiction plays a fundamental role in covering up human rights atrocities committed by security forces, particularly the army."

The decision in a way is an indictment of President Felipe Calderón's drug-interdiction campaign, in which he made extensive use of the Army and the Navy to confront drug-trafficking organizations.

The complaints against the military have increased significantly since the president launched the campaign in 2006 ([SourceMex, Jan. 24, 2007](#)).

While the administration has succeeded in dismantling some drug operations and capturing cartel leaders ([SourceMex, Nov. 5, 2008, Feb. 3, 2010, and Jan 18, 2012](#)), the effort has taken a toll on civilians. And many civilian victims have not been just bystanders caught in the crossfire. Many complaints have been lodged against military personnel for direct violations against civilians ([SourceMex, Aug. 12, 2009, and Oct. 26, 2011](#)).

The IACHR ruling in 2009 led the administration to finally acknowledge that its war against drug traffickers was causing a problem in interactions between the military and civilians. But rather than change its strategy and remove Army and Navy personnel from the drug-interdiction effort, the

administration agreed to push for civilian courts to gain jurisdiction in cases of military violations of civilian rights. In late 2010, the president sent the Congress legislation to that effect ([SourceMex, Nov. 3, 2010](#)), a signal that the administration supported holding military personnel accountable for crimes committed against civilians.

But some experts are not quite as confident in the civilian justice system to prevent abuses.

Alejandro Anaya Muñoz, an analyst at the Centro de Investigación y Docencia Económicas (CIDE), said civilian courts have done little to prevent similar abuses by police officers who fall under their jurisdiction.

"The civil system of penal justice in Mexico doesn't work either," Anaya Muñoz told the Associated Press. "They are better in terms that they are more transparent and more accessible to human rights lawyers and activists, but they don't work in practice."

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