



# United States - Mexico Extradition Treaty

June 2003

LL File No. 2003-14793  
LRA-D-PUB-000205

This report is provided for reference purposes only.  
It does not constitute legal advice and does not represent the official  
opinion of the United States Government. The information provided  
reflects research undertaken as of the date of writing.  
It has not been updated.

LAW LIBRARY OF CONGRESS

UNITED STATES - MEXICO EXTRADITION TREATY

**I. Does the United States - Mexico Extradition Treaty cover only Mexican citizens and dual nationality citizens of Mexico, or does it also include U.S. and other non-Mexican citizens?**

Article 1 of the United States - Mexico Extradition Treaty requires the extradition of persons charged with, or convicted of, any of the crimes and offenses covered by the treaty committed within the jurisdiction of one of the signatories, found within the territory of the other.<sup>1</sup>

Article 3 of Mexico's International Extradition Act provides that all extradition requests will be conducted and resolved by the Secretariat of Foreign Relations.<sup>2</sup> The Secretariat may grant an extradition request regardless of the extraditee's nationality, so long as the request is made pursuant to the provisions of article 1 of the Treaty, *i.e.*, that the person sought has been charged with an offense, has been found guilty of committing an offense, or is wanted to complete a judicially pronounced penalty for an offense committed within the territory of the requesting State.<sup>3</sup>

**II. Does the United States - Mexico Extradition Treaty supercede Mexican law and the October 2001 decision by the Mexican Supreme Court that life imprisonment is unconstitutional?**

This inquiry raises the following issues under Mexican Law:

- hierarchy of legal sources in Mexico
- *jurisprudencia* and its role in the Mexican legal systems
- relevance of the United States - Mexico Extradition Treaty vis-à-vis Mexican law and the October 2001 decision issued by Mexico's Supreme Court.

---

<sup>1</sup> Extradition Treaty between the United States of America and the United Mexican States, art. 1, May 4, 1978, U.S. - Mex., 31 U.S.T. 5059.

<sup>2</sup> Ley de Extradición Internacional, DIARIO OFICIAL of Dec. 29, 1975, as amended.

<sup>3</sup> Telephone Interview with Officers from the Mexico's Secretariat of Foreign Relations (June 19, 2003).

### **A. Hierarchy of Legal Sources in Mexico**

Under Mexican Constitutional Law, article 133 of the Mexican Federal Constitution is interpreted in virtually the same terms as the “Supremacy Clause” provision contained in article VI, section 2 of the United States Constitution.<sup>4</sup>

Article 133 of the Mexican Federal Constitution provides:

This Constitution, the laws of the Congress of the Union that emanate therefrom, *and all treaties that have been made and shall be made in accordance therewith*<sup>5</sup> by the President of the Republic, with the approval of the Senate, shall be the supreme law of the whole Union.

The Mexican Supreme Court has interpreted this article stating that the Federal Constitution is placed at the apex of Mexico’s legal system, as the Supreme Law of the Republic.<sup>6</sup> Treaties that are in accordance with the Constitution occupy the second hierarchical level.<sup>7</sup> The third level is made up of Federal Statutes and Federal Codes.<sup>8</sup>

Therefore, all treaties, Federal Statutes, and Codes must be in accordance with the Constitution, which is the supreme law of Mexico.

### **B. *Jurisprudencia* and its Role in the Mexican Legal System**

Judicial decisions in Mexico are not law.<sup>9</sup> However, the Supreme Court and the Federal Appellate Courts in Mexico create what is known as *jurisprudencia*, which is a set of five consecutive and consistent decisions on the same issue.<sup>10</sup> Even though *jurisprudencia* is not a source of law, it is mandatory for all federal, state, and

---

<sup>4</sup> Jorge A. Vargas, A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS, vol. 2, 249 (West Pub., St. Paul, Minn, 1998).

<sup>5</sup> Emphasis added.

<sup>6</sup> Novena Epoca, Pleno de la Suprema Corte de Justicia de la Nacion, Semanario Judicial de la Federacion y su Gaceta, Tomo X, Nov. 1999, Tesis P. LXXVII/99, 46.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Novena Epoca, Pleno de la Suprema Corte de Justicia de la Nacion, Semanario Judicial de la Federacion y su Gaceta, Tomo XII, Dec. 2000, Tesis P./J. 145/2000, 16.

<sup>10</sup> Ley de Amparo, arts. 192, 193, DIARIO OFICIAL of Jan. 10, 1936, as amended.

military courts and administrative and labor tribunals at the local and federal levels to follow the decisions.<sup>11</sup>

### C. The October 2001 Decision Issued by the Mexican Supreme Court

*Jurisprudencia* is also produced when Mexico's Supreme Court resolves a conflict over contradictory or inconsistent decisions rendered by two or more Federal Appellate Courts.<sup>12</sup> The October 2001 decision was issued in this fashion in order to solve a conflict between two federal appellate courts in Mexico that held contradictory rulings on extradition proceedings.

The Fourth Appellate Court for the First Circuit in Mexico ruled that the penalty of life imprisonment is a cruel and unusual punishment and is prohibited by article 22 of the Political Constitution of the United States of Mexico. As a result, this Court ruled that in order to proceed with a request of extradition, the requesting State must bind itself not to impose the penalty of life imprisonment to the person sought or to impose a lesser punishment pursuant to its legislation.<sup>13</sup>

On the other hand, the First Appellate Court for the First Circuit in Mexico issued an opposite ruling on the same issue. This court stated that life imprisonment is not a cruel and unusual punishment. Therefore, the Court added, an extradition request may be granted even if the person sought faces the possibility of life imprisonment in the requesting country.<sup>14</sup>

In October 2001, Mexico's Supreme Court issued a decision in order to solve the conflict between the two appellate courts. The Supreme Court stated that pursuant to article 22 of the Mexican Constitution, life imprisonment is a cruel and unusual punishment and, therefore, is unconstitutional. Thus, an extradition request shall be denied if there's a possibility that the person sought could face life imprisonment in the requesting State. The actual ruling is as follows:

Extradition. The penalty of life imprisonment is considered an unusual punishment and is prohibited by article 22 of the Political Constitution of the United States of Mexico. Therefore, to proceed with the request of extradition, the requesting State must bind itself not to impose it or to impose a lesser punishment pursuant to its legislation.

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Novena Época, Pleno de la Suprema Corte de Justicia de la Nación, Semanario Judicial de la Federación y su Gaceta, tomo, XIV, Oct. 2001, Tesis: P./J 125/2001, page 174.

<sup>14</sup> *Id.*, at page 172.

Pursuant to a provision of article 10, paragraph V, of the Law on International Extradition, if the crime for which extradition is requested is punishable by the death penalty or any [punishment] under the laws of the requesting party that is prohibited by article 22 of the Political Constitution of the United States of Mexico, extradition could be refused, unless this party guarantees that it will not impose the death penalty, or, that if it is imposed, it will not be carried out. Under these conditions, the punishment of life imprisonment is considered an unusual penalty and is prohibited by the above mentioned article 22, in as much as it departs from the essential purpose of the penalty, which is the rehabilitation of the offender to incorporate him/her into society. It is, therefore, unquestionable that the requesting State must bind itself not to impose the penalty of life imprisonment, only another less serious punishment.<sup>15</sup>

In dictum<sup>16</sup>, the Supreme Court stated that Mexico has a long tradition of rejecting life imprisonment, which can be inferred from the fact that the penalty of imprisonment is always limited to a pre-determined period of time in all criminal statutes and regulations currently in effect in Mexico.<sup>17</sup> Life imprisonment, the Court added, is not included in any law in Mexico as an applicable punishment for any crime, which reflects the will of the Mexican people to reject life imprisonment as a valid punishment in Mexico.<sup>18</sup>

#### **D. Relevance of the United States - Mexico Extradition Treaty Vis-à-vis Mexican Law and the October 2001 Decision Issued by Mexico's Supreme Court.**

The Supreme Court's ruling does not seem to create a conflict of relevance with the Extradition Treaty. Rather, the purpose of the October 2001 decision was to ensure that the implementation of the Treaty is in accordance with the Supreme Law of Mexico, *i.e.*, the Mexican Constitution. In its decision, the Court stated that a person subject to an extradition process in Mexico cannot be punished with life imprisonment in the requesting country, as such penalty is prohibited under Mexico's Constitutional law. Therefore, it seems that there is no contest between the Treaty and the Supreme

---

<sup>15</sup> Id., at page 227.

<sup>16</sup> Dictum is an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule or principle, but not necessarily involved in the case or essential to its determination. Therefore, Dictum is any statement enunciated by the court merely by way of illustration, argument or suggestion.

<sup>17</sup> Supra note 13, at page 223, 224.

<sup>18</sup> Id.

Court's decision, because the latter was issued in order to ensure that the Treaty is carried out in accordance with Mexico's Constitution.

It should be emphasized, though, that since the 2001 ruling is mandatory for all Mexican courts, any person subject to an extradition process in Mexico will be able to obtain protection from Mexican courts in order to ensure that the requesting State binds itself not to impose the penalty of life imprisonment.

### **III. Conclusion**

The United States - Mexico Extradition Treaty does not seem to be in conflict with the October 2001 decision issued by Mexico's Supreme Court, because the latter was issued in order to ensure that the Treaty is implemented in accordance with Mexico's Constitution. Therefore, it appears that there is no contest between the Treaty and the Supreme Court's ruling.

Prepared by Gustavo E. Guerra  
Legal Specialist  
June 2003