

# TERRUM

Briefing, analysis, opinion and insight of legal affairs in Mexico

Digital Publication by ABOGADOS SIERRA Y VAZQUEZ

 March 15, 2012  
year 01 | No. 03

**The Florence Cassez case:  
An emblematic case related to the  
right of due process of law.**

*Antonio Vázquez P. 01-03*

**APRIL NEWS** on  
*Mexican Commercial Law P. 04*

**Contributor** *P. 05*

**"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"**

# The Florence Cassez case: An emblematic case related to the right of due process of law.

by Antonio Vázquez\*.

**O**n the morning of December 9th. 2005, the main news T.V. programs in Mexico broadcasted live the release of hostages made by the Mexican federal police and the arrest of a band of kidnappers at the ranch named “Las Chinitas”. Among the group of people arrested there was a French citizen named Florence Cassez, girlfriend of the gang leader.

**“Three months later, the former Director of the Federal Investigation Agency, admitted that the “live” detention was part of a TV montage, but the defendants were guilty of kidnapping”.**

This detention, seen live through Mexican TV had great impact on public opinion, however as the weeks passed, it raised suspicion because of the risk involved in a hostage release operation and the ease with which the reporters were able to broadcast the event live.

Three months later, the former Director of the Federal Investigation Agency, admitted that the “live” detention was part of a TV montage, but the defendants were guilty of kidnapping.

The evidence proves that Florence Cassez and the group of kidnappers were arrested in the morning of December 8th – one day before the live broadcast of the arrest - and were taken to the “Las Chinitas” ranch to star in the TV montage and therefore, the human rights of these people being brought before the Public Prosecutor were violated.<sup>1</sup> In the specific case of Mrs. Cassez, it was evidenced that the Mexican authorities served notice of her detention to the French consulate 26 hours after the arrest, which is against the provisions of Vienna Convention. Mexican authorities argued however that before the formal contact took place, there is evidence that they tried to make contact with the consulate, without success.

After six years of criminal procedures, Florence Cassez and the rest of the members of the band have been condemned of the specific crimes of aggravated kidnapping, organized criminality and other crimes which called for a criminal conviction of around sixty years. For the last few years, the case has been reviewed by three different Federal Courts and moreover, this case has caused diplomatic friction between Mexican and French Governments, because according to the Cassez defense, the Mexican authorities did not comply with the due process of law provided by the Mexican Constitution and various treaties signed by Mexico.

\*IN COLABORATION WITH ROBERTO NAJERA

1- *Excelsior News* . Article “El caso Cassez”. José Rubinstein. 03-23-2012.

At this time, Florence Cassez's case is being reviewed by the Supreme Court of Justice, with the main discussion being based on the violations of the human right of due process of law. In this edition of *Coelum*, we have decided to point out some general ideas of the importance of this principle, taking this case as a clear example. Our intention with this article is to use this emblematic case to analyze the principle of due process of law in our Mexican legal system, its effects and its scope.

**“...Florence Cassez's case is being reviewed by the Supreme Court of Justice, with the main discussion being based on the violations of the human right of due process of law.”**

The principle of due process of law can be defined as the requirements that must be observed in the procedural mechanisms, in order that any citizen may defend their rights against any act of authority that may affect him.<sup>2</sup>

The main existence of this principle is to provide the involved parties a fair trial.

The due process of law is provided by the article 14, 16 and 18 of the Mexican Constitution and articles 8 and 25 of the American Convention of Human Rights (San Jose Pact) of which Mexico is part. According to the latest constitutional amendment, the procedural guarantee of all citizens has changed to the category of “human rights” and this is also supported by the San Jose Pact. Among these human rights,<sup>3</sup> the right of due process of law is one of the basic principles on procedural matters. Our Mexican doctrine has defined this concept of “due process” as the group of all kind of conditions and legal and judicial elements which must be complied with in order to legally affect the rights of the citizen and based on this main concept, we can identify other rights which derived directly from this principle right, for example: Free access to Courts, right to a fair and public procedure, right to defend, right to evidence, free access to legal assistance, independence and impartiality of Judges, etc.

As consequence of this important case, one the main topics of discussion in Mexico related to this right of due process is based on the questions: What should be the consequence of violating the rights of due process? Should any kind of violation to this right give freedom to the affected party? Or must the Courts review the nature of the specific right which was violated in order to determine the effect of this violation.

2- Sergio García Ramirez. “El debido proceso, Concepto General en la CADH”. *Boletín de Derecho Comparado*. UNAM. Mexico 2006.

3.- The human rights may be defined as “those groups of capacities, liberties, prerogatives, on civil, political, economic, social and cultural aspects, including the recourses and mechanisms of guaranty of all of them, which are recognized to the human being as individual and collective being.” Rodriguez y Rodriguez Jesus cited by Gomez Lara Cipriano, “El Debido Proceso como derecho humano” page 342

4.- Gomez Lara Cipriano, “El Debido Proceso como Derecho Humano”.

According to the preliminary draft of resolution prepared by Arturo Zaldivar the Supreme Court Minister originally appointed to prepared the draft, the main violations to the rights of Florence Cassez, and therefore to due process of law were the following:

1. “At the time of Cassez’s detention, police agents did not contact the French consulate, thus violating the right of any foreign citizen to receive immediate consulate assistance in case of detention.<sup>5</sup> Effective and immediate consulate assistance is essential to establish a fair trial, because through this assistance the foreign national understands the reasons for detention, their available rights, the basic comprehension of the criminal system being faced, and the decision to hire an attorney. This assistance is essential to avoid a defenseless stage.”<sup>6</sup>
2. “At the moment of detention, police agents did not follow the protocol to present the detainees immediately to the Public Ministry; rather Cassez was taken to the “Las Chinitas” ranch in order to participate in the TV montage, which was prepared and directed by the Federal Investigation Agency. The TV montage therefore showed Florence Cassez as a criminal and kidnapper through a recreation of facts that was planned to create an impact on the public opinion, and without a fair trial that would clarify the legal situation of the French woman.”<sup>7</sup>

According to Minister Zaldivar’s draft these violations tainted the whole procedure, and also suppressed other fundamental principles, such as the presumption of innocence and an adequate defense. Considering this, Minister Saldivar stated in his preliminary draft of resolution, that these violations had a corrupting effect on the whole procedure, and Florence Cassez should be declared free. The preliminary draft of resolution did not however get the enough votes to be approved because there was no agreement among the ministers of the legal consequences of these violations: In other words, it seems that while there is a consensus between the ministers about the violation of due process, this does not mean necessarily that these violations may produce the effect that the affected party be freed and be considered innocent. As result of these discussions among the ministers, the case was turned to another drafter minister, who will prepare a new draft based on these ideas and in which the effects of the judgment will be discussed again.

As you can see, the analysis of the right of due process and the effects that may be produced by its violation is a complex discussion, which should be carefully studied. It is clear that the right of due process is one of the most important procedural rights, however it is also evident that the violation of this right may produce varied legal effects which should be analyzed case by case and based on the nature of the violated right, for example: The nullity of the whole procedure, the nullity of some specific evidences, the reposition of some part of the procedure, the confirmation of the effectiveness of the affected evidence and therefore, in many of these cases, a new analysis by the Courts of the remaining procedural acts or evidences should be made.

5.- Article 36.1, Vienna Convention on Consular Relations, 1963.

6.- Preliminary draft of resolution. Minister Arturo Saldivar. March 2012.

7.- idem

**A request to the OECD to simplify travel procedures.**

During the 89th session of the Committee of Tourism from the Organization for Economic Cooperation and Development (OECD), Sectur, México's Ministry of Tourism pointed out the importance of simplifying immigration procedures and visa creation to enhance the industry "at the time the global economy faces great challenges". *El Economista*. 23/April/12.

**A guarantee safety for detained people.**

The President Felipe Calderón issued a Safety Protocol for the Ministry of National Defense (SEDENA), Ministry of Marine (SEMAR), Ministry of Public Safety (SSP) as well for the Republic General Office (PGR) to protect the rights of the victims and offenders. *El Informador*. 24/April/12.

**Wal-Mart Under Fire.**

Wal-Mart has suffered a severe drop of more than 10% in the price of its shares after the publicity about bribery in Mexico to allow for violation of land use regulations for some of the land purchased to set up their stores. *El Economista*. 24/April/12.

**Electoral Tourism, nearly one thousand million pesos in expenses.**

Nearly one thousand million pesos will be the total economic benefit that the national tourism sector expects to gain this year – derived from the 2012 election travel- by the purchase of travel packages and local services by candidates who seek one of the one thousand eight hundred elected positions in federal, state and municipal elections. *El Financiero*. 27/April/12.

# TERRUM

*Digital Publication*  
*Abogados Sierra y Vázquez*

## CONTRIBUTORS

### Antonio Vázquez

Attorney at Law: Admitted to practice law in 1991. Mr. Vázquez of Mexican nationality obtained his law degree at the Universidad Nacional Autónoma de México (UNAM). Mr. Vázquez attended post-graduate studies in Civil Law, Corporate Law, “Amparo” Financial and Procedural Law, Civil and Commercial matters. Mr. Vázquez has been Professor of “Amparo” in UNAM and Lecturer at various universities throughout Latin America. Currently Mr. Vázquez is member of the International Bar Association. Authorized as a private mediator in civil and commercial matters recognized by the Center of Alternative Justice of the Federal District and the Superior Tribunal of Justice of the Federal District since January 2010. LANGUAGES: Spanish and English. PRACTICE AREAS: Arbitration, Civil Law, Civil Litigation, Amparo, Corporate Law and Foreign Investment. e-mail: [avazquez@asyv.com](mailto:avazquez@asyv.com)

## ABOGADOS SIERRA Y VAZQUEZ

Prol. Reforma No. 1190 25th Floor  
Santa Fe México D.F. 05349  
t. (52.55) 52.92.78.14  
f. (52.55) 52.92.78.06  
[www.asyv.com](http://www.asyv.com) / [www.asyv.aero](http://www.asyv.aero)  
[mail@asyv.com](mailto:mail@asyv.com)

## TERRUM

The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra y Vazquez SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.