

26 September 2001

Further information on EXTRA 32/01 (AMR 51/076/2001, 29 May 2001) and follow-ups (AMR 51/080/2001, 8 June; AMR 51/089/2001, 18 June; AMR 51/126/2001, 24 August) - Death penalty / Legal concern

USA (Oklahoma)Gerardo Valdez Maltos (m), Mexican national, aged 41

The Oklahoma Court of Criminal Appeals has granted an indefinite stay of execution in the case of Gerardo Valdez Maltos.

The order granting the stay stated: "This court has before it a unique and serious matter involving novel legal issues and international law. This court... orders the execution date of the petitioner hereby stayed until further order of his court."

Defence attorneys had filed a petition with the court, arguing that the recent binding judgement of the International Court of Justice (ICJ) on consular rights violations (see below) must be applied by the US courts and mandates a new trial for Valdez.

Gerardo Valdez was sentenced to death in 1990 for the 1989 murder of Juan Barron. Although the authorities were aware of his nationality from the outset, he was never informed of his right, under the Vienna Convention on Consular Relations (VCCR), to contact the Mexican consulate for assistance.

On 6 June, the Oklahoma Pardon and Parole Board recommended that Valdez's death sentence be commuted after hearing new mitigating evidence discovered with Mexican consular assistance, including evidence of brain damage Valdez had sustained as a child and teenager in Mexico. The Mexican government also submitted that the violation of Valdez's consular rights directly resulted in his death sentence, by preventing consular officials from providing crucial assistance that would have remedied serious deficiencies in his trial representation. On 16 June, Governor Keating announced a 30-day reprieve to consider the Board's recommendation.

On 27 June, the ICJ issued its binding judgement in the LaGrand case (*Germany v USA*). The ICJ declared that the USA had violated its obligations under the VCCR by failing to inform German nationals Karl and Walter LaGrand of their consular rights following their arrest in Arizona on a capital murder charge. As in the case of Gerardo Valdez, consular assistance was delayed by more than a decade due to the failure of local authorities to comply with their binding treaty obligations. Both men were executed in 1999, after unsuccessful clemency reviews which took the treaty violation into account. The ICJ also ruled that the USA's procedural barriers to legal appeals must not prevent the domestic courts from providing the necessary "review and reconsideration" of such sentences.

On 20 July, Governor Keating announced that he had rejected the parole board's recommendation for clemency. In a letter to the President of Mexico, the governor wrote that, having reviewed the case and consulted with the US Departments of State and Justice: "No compelling reason exists to undermine the confidence and integrity of the jury and the courts". Governor Keating further stated that he had taken into account the ICJ decision by providing "review and reconsideration" of the VCCR violation in the Valdez case. The governor described the violation as "regrettable and inexcusable", but dismissed it

as resulting in "harmless errors". The governor also stressed that there was no doubt concerning Valdez's guilt, that he had been represented by an experienced attorney, and that the jury had determined Valdez knew right from wrong based on expert psychiatric testimony.

The defence subsequently produced new information further undermining Governor Keating's justification for denying clemency. One of the two state psychiatrists who testified at the trial that Valdez was sane and knew the difference between right and wrong has now withdrawn that diagnosis. After reviewing extensive new testing confirming Valdez's brain damage, the psychiatrist has concluded that Valdez was not sane at the time of the crime and that the jury could not reliably assess his punishment without knowledge of this evidence. Valdez's trial attorney has also conceded that he failed to adequately investigate his client's background and medical history, resulting in a failure to present the brain damage evidence.

See also, *A time for action: Protecting the consular rights of foreign nationals facing the death penalty* (AMR 51/106/2001, released 22 August).

No further action by the UA Network is requested at present. Many thanks to all who sent appeals.