

This summary contains the cover page, the synthesis and the extract of a decision of Mexico's Supreme Court of Justice. Changes were made to its original text to facilitate the reading of the extract. This document has informative purposes, and therefore it is not binding.

**PRISONER TRANSFER AND PENITENTIARY MODEL OF SOCIAL REINTEGRATION  
(TRASLADO DE REO Y MODELO PENITENCIARIO DE REINTEGRACIÓN SOCIAL)**

**CASE:** *Amparo en Revisión 151/2011*

**REPORTING JUSTICE:** Sergio A. Valls Hernández

**DECISION ISSUED BY:** Plenary of Mexico's Supreme Court of Justice

**DATE OF THE DECISION:** January 12, 2012

**KEY WORDS:** fundamental right of offenders to complete their sentence in a penitentiary near their domicile, prisoner transfer, penitentiary model of social reintegration.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión 151/2011*, Plenary, Sergio A. Valls Hernández, J., decision of January 12, 2012, Mexico.

The full text of the decision may be consulted at the following link:

<https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emplematicas/sentencia/2022-01/AR151-2011.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center for Constitutional Studies of Mexico's Supreme Court of Justice, Extract of the *Amparo en Revisión 151/2011*, Mexico.

## SUMMARY OF THE *AMPARO EN REVISION* 151/2011

**BACKGROUND:** In April 2010, ASR filed an *amparo* lawsuit against various penitentiary authorities due to his transfer from the Regional Men’s Social Rehabilitation Center of Zacatecas to the Federal Center for Social Rehabilitation in Veracruz. A district judge in the state of Zacatecas dismissed the lawsuit and denied the *amparo*. ASR filed a *recurso de revisión*. A Collegiate Circuit Court in the state of Zacatecas overturned the dismissal and transferred the case to the Supreme Court.

**ISSUE PRESENTED TO THE COURT:** Whether an *amparo* lawsuit filed against the transfer of an offender, from one Social Rehabilitation Center to another, is an administrative matter or a criminal matter. Whether there was a violation of the offender's fundamental right to complete his sentence in a penitentiary near his domicile, contained in article 18 of the Constitution.

**HOLDING:** ASR was granted the *amparo* so he could be returned to the Men’s Social Rehabilitation Center of Zacatecas because the Plenary of this Supreme Court concluded that there was a violation of his fundamental right to complete his sentence in a penitentiary near his domicile. This is because the reason the Constitutional Legislator established a fundamental right in favor of individuals who have been sentenced for crimes other than organized crime and who do not require special security measures, was to promote their reentry into the community as a form of social reintegration. In accordance with the principle of legislative development [*reserva de ley*], this right is subject to the conditions established by secondary federal or local legislators in their laws. However, in the absence of secondary legislation, as happened in this case, when offenders request to serve a sentence in the penitentiary closest to their domicile, they should be guaranteed this fundamental right in direct application of article 18 of the Federal Constitution of the United Mexican States.

**VOTE:** The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=125123>

## EXTRACT OF THE *AMPARO EN REVISION* 151/2011

p.1 Mexico City. The Plenary of Mexico's Supreme Court of Justice (the Supreme Court), in session of January 12, 2012, issues the following decision.

### BACKGROUND

p.1 In April 2010, ASR requested the *amparo* and protection of the Federal Courts against his transfer from the Regional Men's Social Rehabilitation Center of Cieneguillas, Zacatecas, in which he was serving a sentence for the crime of aiding escape established and punished by article 150, first and second paragraph of the Federal Criminal Code, to the Federal Center for Social Rehabilitation Number Five East, in Veracruz. In his *amparo* lawsuit he argued, among other issues, that his fundamental right to serve his sentence in the penitentiary closest to his domicile was violated, a fundamental condition for achieving his social rehabilitation, because he was removed from his family and friends with an unjustified transfer, without having been given the opportunity for a hearing.

p.4 A district judge of the State of Zacatecas dismissed the case and denied the *amparo* and protection of the Federal Courts to ASR.

p.5 ASR, through his public defender, filed a *recurso de revisión*.

p.20 In October 2010, the Zacatecas Collegiate Circuit Court overturned the dismissal declared by the District Judge and ordered the transfer of the case to the Supreme Court.

### STUDY OF THE MERITS

p.73 Before reviewing the grievances stated by ASR, this Court must determine the subject matter of the *amparo* lawsuit that is brought against the transfer of an offender from one social rehabilitation center to another.

p.73-75 The Supreme Court had previously ruled that *amparo* proceedings filed against the transfer of an offender from one social rehabilitation center to another are administrative matters.<sup>1</sup>

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<sup>1</sup> Court precedent 37/2010.

However, on June 19, 2011, the Fifth Transitory Article of the Decree amending the Federal Constitution entered into force. The reform of articles 18 and 21 of the Constitution introduced the penitentiary model of social reintegration and judicialization of the system of modification and length of sentences. This, together with the constitutional reform of June 10, 2011, which amended the same second paragraph of Article 18 of the Constitution, represented the constitutional recognition of the human rights established therein and in the international treaties to which the Mexican State is a party; a protection scheme that was extended to the model of the penitentiary system when it was established that it will be organized on the basis of respect for human rights.

- p.75 This constitutional reform made it clear that it would not be possible to transform the country's penitentiary system if sentence enforcement continued to remain under the absolute control of the Executive Branch. Hence, in order to achieve this transformation, it was decided to restructure the system, circumscribing the Executive Branch's power to manage prisons and conferring to the Judiciary Branch the power to enforce the sentence, for which purpose the "sentence enforcement judge" was created. This is intended, on the one hand, to avoid breaking a sequence resulting from the sentence itself, since the Judicial Power that issued the sentence will be the one to ensure the sentence is strictly complied with, in the manner in which it was pronounced in the final decision and, on the other, to put an end to the discretion of the administrative authorities regarding the enforcement of these sanctions.
- p.76 With this, all the events of legal importance that may arise during the enforcement of the sentence as a result of the constitutional reform are under the supervision of the judicial authority in criminal matters, such as the application of penalties other than imprisonment, the daily treatment received by offenders, the granting or cancellation of benefits, the determination of the places where the sentence should be served and related situations. Therefore, any dispute an offender has must be heard and decided by the *amparo* judges in criminal matters, which implies a fundamental change from an administrative matter to a criminal one.

- p.79 With the entry into force of the mentioned constitutional reforms, the administrative authorities are no longer responsible for supervising the means employed to achieve reintegration of offenders to society and the events occurred whilst serving the sentences, including transfers. Now the judicial authorities and, in particular, the sentence enforcement judges at both the federal and local level will have those responsibilities as well as the obligation to control the decisions that the penitentiary administration may adopt on such enforcement. Thus, from now on the determinations relating to the transfer of offenders, in so far as they are related to the modification of penalties, are the exclusive jurisdiction of the judicial authorities and, because of the subject matter they involve, should be heard by the judges specialized in criminal matters, as they are considered to constitute another stage of the criminal procedure.
- p.80 In view of the above, the constitutional context of the holding in the court precedents 37/2010 and 1ª./J. 128/2008 no longer applies; therefore, it must be considered that they are set aside, in accordance with the provisions of article 194 of the Amparo Law.
- p.81 The affected party also stated that the *amparo* judge's interpretation of article 18 of the Federal Constitution is contradictory because it recognizes, on the one hand, the fundamental right of offenders to complete their sentences in the penitentiaries closest to their domicile, but on the other hand decides in advance that there was no violation of article 18 of the Constitution to his detriment.
- p.82 The Supreme Court found that this argument is justified, because there was a violation of the fundamental right enjoyed by the affected party to complete his sentence in a penitentiary near his domicile.

This is so because the intention of the Constitutional Legislator was to establish [in article 18 of the Constitution] the fundamental right of those individuals who have been sentenced by a final decision, for crimes other than organized crime and who do not require special security measures, to serve their prison sentence in the penitentiary closest to their domicile. The reason for this is to promote their reentry into the community as a form of social reintegration. For the Supreme Court, the word "may" used by the legislator is meant for the offenders and not the legislative or administrative authorities, with which the

offenders may or may not express a specific request to be transferred to the penitentiary closest to their domicile, since only in this way, in view of the proximity to their community, to their natural environment and more specifically to their family environment and their cultural roots, can the constitutional objective of social reintegration be more effectively achieved.

p.83 The same constitutional article establishes that this right will be subject to the cases and conditions established by the secondary federal or local legislator, since it is a limited, restricted right, not an unconditional or absolute right.

Thus, the secondary legislator, in compliance with the constitutional mandate, enjoys the widest freedom to configure the requirements and conditions for the offender to achieve and enjoy this benefit, but it cannot deny the exercise or recognition of that right.

p.84 Thus, in application of the principle of legislative development [*reserva de ley*], it is for the constitutionally competent legislative bodies to abstractly define the conditions under which offenders may serve their sentences in penitentiaries close to their domiciles. For the laws issued in this context to be valid, they must, in addition to being expressly provided for in the Constitution, be suitable, necessary, and proportional in relation to the purpose pursued, because only this prevents any attempt by the ordinary legislator to render the constitutionally recognized right meaningless. This is regardless of whether, in due course, the affected party is allowed to exercise his or her right to a hearing before the corresponding judicial authority, in order to determine the place where he or she must serve the prison sentence imposed in a criminal proceeding.

p.86 In this way, it can be argued that even if the law does not establish the cases and the conditions under which those sentenced for crimes other than organized crime and that do not require special security measures can serve their sentences in the centers closest to their domicile, this does not mean they do not have the right to request it, or that they have that right, but it is subject to the condition that the corresponding law be issued. Accepting that argument would imply that this fundamental right that the legislator recognizes in favor of offenders would be subject to a discretionary act of one of the branches derived from the State, which is not the case. In the absence of the relevant

legislation, when there is a request from offenders to access this right by direct application of article 18 of the Federal Constitution, their fundamental prerogative must be recognized.

### DECISION

p.87-88 The decision challenged is overturned and ASR is granted the *amparo* outright. Since he has not been sentenced for the crime of aiding escape established in and punished by article 150, first and second paragraph, of the Federal Criminal Code, nor for crimes established in the Federal Law against Organized Crime, and since there is no evidence to show that he is an inmate who requires special security measures, in accordance with the provisions of articles 103 and 107 of the Constitution and article 80 of the Amparo Law, ASR should be restored to the enjoyment of the constitutional rights that were violated to his detriment and things restored to the state they had before the existence of the challenged act. Consequently, the affected party must be returned to the Social Rehabilitation Center located in Cieneguillas, Zacatecas.

However, the granting of the *amparo* does not imply that the judicial authority may not eventually transfer the offender to a social rehabilitation center other than the one in which he is located, since this would be permitted if the specific situation falls under the respective constitutional and legal premises, in terms of the provisions of article 21, third paragraph of the Federal Constitution.