

Immigration and Refugee Board



Commission de l'immigration et du statut  
de réfugié

Refugee Protection Division

Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : MA6-01580

Private Proceeding  
Huis clos

**Claimant(s)**

XXXXX XXXXX XXXXX XXXXX

**Demandeur(e)s d'asile**

**Date(s) of Hearing**

November 10, 2006

**Date(s) de l'audience**

**Place of Hearing**

Montreal, Quebec

**Lieu de l'audience**

**Date of Decision**

January 12, 2007

**Date de la décision**

**Panel**

Paule Robitaille

**Tribunal**

**Claimant's Counsel**

M<sup>c</sup> Manuel Antonio Centurion

**Conseil du demandeur d'asile**

**Refugee Protection Officer**

[Filing of documents]

**Agent de la protection des réfugiés**

**Designated Representative**

N/A

**Représentant désigné**

**Minister's Counsel**

N/A

**Conseil du ministre**

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Mr. XXXXX XXXXX XXXXX XXXXX, a Mexican citizen, is claiming refugee protection under sections 96<sup>1</sup> and 97<sup>2</sup> of the *Immigration and Refugee Protection Act*.

Mr. XXXXX, 27, alleges that he has suffered persecution as a result of his sexual orientation; he is homosexual.

He stated that he has been a victim of the pernicious homophobia in his country throughout his entire life. He contended that as a teenager he was harassed at school and frequently beaten by his father. His entire family rejected him.

Mr. XXXXX stated that, tired of being marginalized and ridiculed at school, he quit school to look for work. However, his effeminate appearance made finding work especially difficult. He was forced to leave several jobs due to harassment by his co-workers.

He stated that in 1997, while on the way to the movies with a friend, he was assaulted by four co-workers, who tried to rape him with a broomstick. Following this attack, he found work as a waiter in a gay bar in the XXXXX XXXXX, the gay district of Mexico City. One evening, as he was leaving the bar, he was attacked by police officers, who stole his money and called him a [translation] “dirty whore.”

Demoralized and desperate to leave his country, the claimant found a job in XXXXX, Oregon, with the help of some friends. He was in the United States from XXXXX 2003 to XXXXX 2004, during which time he tried without success to legalize his status. He then had to return to Mexico to visit his sick mother.

After witnessing a homosexual being attacked in the street, the claimant took steps to leave his country. He stated that he was told that, in Canada, Mexican homosexuals are protected. Therefore, he decided to leave for Montreal. He boarded an airplane on XXXXX, 2006, and made a claim for refugee protection the same day, upon arrival at Pierre Elliot Trudeau Airport.

## **DECISION**

The panel is of the opinion that the claimant is a “Convention refugee.”

## ANALYSIS

### Identity

The claimant established his identity to the panel's satisfaction by producing a certified photocopy of his Mexican passport.

### Credibility

There were no omissions or major contradictions during the hearing. The claimant's testimony was generally credible.

### Alleged persecution due to claimant's homosexuality

Mr. XXXXX alleges that he was persecuted in Mexico because he is homosexual. In this regard, the panel must first establish what constitutes persecution.

The panel has therefore considered case law and legal doctrine in order to determine whether or not the discrimination described constitutes persecution.

According to the case law, persecution consists of a serious and recurring violation of a fundamental right.<sup>3</sup> In *Rajudeen*, the Federal Court of Appeal provided the following definitions:

To harass or afflict with repeated acts of cruelty or annoyance .... A particular course or period of systematic infliction of punishment directed against those holding a particular (religious belief); persistent injury or annoyance from any source.<sup>4</sup>

Paragraph 54 of the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* states as follows:

Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities.

Mr. XXXXX contended that he was rejected by his family, beaten by his father, harassed so much that he quit school, attacked twice on account of his sexual orientation—once by the police in 2003—and that he experienced great difficulty keeping various jobs due to his effeminate appearance and the high level of discrimination against homosexuals in his country. These points

satisfy the repetition or persistence component of the definition set out in *Rajudeen* (“to harass or afflict with repeated acts of cruelty or annoyance”).

The claimant’s allegations are corroborated by the overwhelming evidence concerning the treatment of homosexuals in Mexico, updated in the latest documentation package on Mexico.<sup>5</sup> The document, published by the Board’s research centre in Ottawa, states that homosexuals are the targets of assault and murder even in Mexico City, which is generally more open to people on the margins. Discrimination against homosexuals in the workplace is widespread. Among other things, the report states:

... homosexuals, bisexuals and transsexuals are confronted with discrimination from colleagues at work and by society in general (Mexico 19 May 2006). Members of these communities are the subject of verbal, physical and psychological abuse and prejudice (ibid.). In an interview with *Es Mas*, Gilberto Rincón Gallardo from CONAPRED stated that homosexuals in Mexico are also rejected by their own parents (*Es Mas* 17 May 2005). According to the survey conducted by CONAPRED and SEDESOL, 48.4 per cent of the heterosexuals surveyed indicated that they would not allow a homosexual to live in their house (Mexico May 2005, 105).

This information supports the claimant’s allegations.

The same document states that there are, on average, 15 homophobic or transphobic (transvestites) murders per day in Mexico, the majority in Mexico City. While Mexico is a violent country with a population of 100 million and hundreds of murders every day, the above-mentioned figure does indicate a homophobic society. The document reports that homosexuals working in Mexico City, in situations similar to that of the claimant, have been beaten and killed, and have received no protection from the authorities.

While Mexico City has a gay district and gay parade,<sup>6</sup> gay magazines that are sold openly at newsstands,<sup>7</sup> and a homosexual community that is claiming a role in the political arena and increasingly dares to protest abuses,<sup>8 9</sup> it remains that Mexican homosexuals suffer daily violence, according to chapter 6.11 of the documentation package.

In light of both Mr. XXXXX testimony and the documentary evidence, the panel finds that the claimant has clearly established that he was a victim of persecution and has a well-founded fear that he would be so again were he to return to the country of his birth.

While the federal government is trying in every way possible to lessen discrimination and prejudice against homosexuals, is passing laws for this purpose and is creating institutions to defend gays,<sup>10</sup> the document MEX101377 (chapter 6.11 of the documentation package) shows that protection for homosexuals in Mexico remains woefully inadequate:

According to the president of CEPRODEHI, the Mexican government does not provide special protection for homosexuals, lesbians and transsexuals (CEPRODEHI 25 May 2006). In a news article, José Aguilar of the Democracy and Sexuality Network (Red Democracia y Sexualidad) condemned the fact that homosexuality is considered a problem but homophobia is not (*La Jornada* 1 July 2005). The activist added that [Translation] "The fact that there are deaths of young people under 30 is very serious" (ibid.). He also expressed concern over what is happening with human rights, especially how intolerance and discrimination lead to a high level of violence (ibid.). An official with the CEDHJ stated that, when a crime against a member of the homosexual, transsexual or lesbian community is investigated, authorities tend not to consider the fact that the crime has been motivated by "hate" (Mexico 19 May 2006; see also EFE 1 Feb. 2006). As a consequence of this attitude, the coordinator of a sexual rights group argued that the effectiveness of investigating and preventing these types of crimes is reduced (ibid.).

It is also stated that CONAPRED is the public body that receives complaints about and deals with cases of discrimination (CEPRODEHI, May 25, 2006). However, its ability to act is limited, and it has no authority to impose sanctions.<sup>11</sup> In view of this document, therefore, the protection provided for homosexuals remains ineffective despite the efforts of the government and of organizations created to help homosexuals.

Mexican homosexuals seeking state protection are faced not only with the corruption and well-known inefficiency of the Mexican police,<sup>12</sup> but also with police officers who often share the homophobic attitudes of the population at large.<sup>13</sup>

The claimant corroborated this information and stated that the homophobic attitudes of police officers in general make any state protection for homosexuals in the workplace or against homophobic assaults practically impossible.

Therefore, in light of the claimant's testimony and the documentary evidence in the new documentation package, the panel finds that the claimant has rebutted the presumption that a country has the means to protect its citizens and that, in this case, Mr. XXXXX has clearly and convincingly shown that he cannot obtain protection from the authorities in his country.

The panel is of the opinion that the internal flight alternative is not a reasonable possibility in this case. The panel takes note of decisions TA4-10802 and TA4-10803, which are persuasive,

but in this case the claimant was not living in a provincial town but in Mexico City, the most tolerant city in the country according to the documentary evidence (see chapter 6). Even in Mexico City, homophobia is still common, and although protective measures exist, they are, according to document MEX101377.EF, ineffective. As stated above, in view of the continual discrimination experienced by the claimant, his repeated loss of employment due to his effeminate appearance and the statistics cited in chapter 6.11, which show that many similarly situated persons have been beaten or even killed simply because of their sexual orientation, not only in Mexico City but throughout the country, the panel finds that the risk of persecution in other Mexican cities remains very serious.

## CONCLUSION

Therefore, having considered all of the evidence, the panel determines that the claimant has satisfactorily discharged his burden establishing that a serious possibility of persecution exists on one of the grounds of the Convention.

Mr. XXXXX XXXXX XXXXX XXXXX is therefore a “Convention refugee” and may receive Canadian protection. The panel allows his claim.

*Paule Robitaille*

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**Paule Robitaille**

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**January 12, 2007**

**Date**

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<sup>1</sup> **96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,  
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or  
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

<sup>2</sup> **97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
- (b) to a risk to their life or a risk of cruel and unusual treatment or punishment if
- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
  - (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
  - (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
  - (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

3 *Ward v. Canada (Solicitor General)* (1993), 2 S.C.R. 689; 20 Imm. L.R.(2d)85.  
4 *Rajudeen, Zahirdeen v. M.E.I.* (F.C.A., No. A-1779-83), Heald, Hugessen, Stone (concurring reasons), July 4,  
5 1984. Reported: *Rajudeen v. Canada (Minister of Employment and Immigration)* (1984, 55 N.R. 129 (F.C.A.)).  
6 Exhibit A-1, chap. 6.11 [MEX101377.E](#). June 5, 2006. Treatment of homosexuals and availability of state  
7 protection (May 2006).  
8 Exhibit A-1, chap. 6.4, *The Tampa Tribune*. June 26, 2005. Oscar Arana, "Gay Pride Parade Fills Mexico City  
9 Streets"; chap. 6.2, *The Economist* (London).. May 21, 2005. "Out and Proud."  
10 Exhibit A-1, chap. 6.1, Reding, Andrew. December 2003. *Sexual Orientation and Human Rights in the  
11 Americas*, p. 57.  
12 Exhibit A-1, chap. 6.3, [MEX42621.E](#). April 15, 2004. Update to MEX38203.E, January 28, 2002, on treatment  
13 of homosexuals and availability of state protection (April 2004).  
14 Exhibit A-1, chap. 6.7, [MEX43529.E](#). May 2, 2005. Information on a Mexico City group called "movimiento  
15 lesbico-gay" and its leader; information on whether the group has been harassed or attacked, and if so the  
16 nature of the harassment and attacks; information on whether past or present members have been specifically  
17 targeted by the police or members of city council, and whether there are openly homophobic city councillors in  
18 Mexico City; a list of non-governmental organizations for gays and lesbians in Mexico City (2002-April 2005).  
19 The federal government has also set up the National Council to Prevent Discrimination (Consejo Nacional para  
20 Prevenir la Discriminacion) to enforce the anti-discrimination laws. See exhibit A-1, chap. 6.9, International  
21 Gay and Lesbian Human Rights Commission. April 23, 2003. "Mexico Becomes the Second Country in Latin  
22 America to Provide National Anti-Discrimination Protection for LGTBs," pp. 56 to 61, and 6.3, [MEX42621.E](#).  
23 April 15, 2004. Update to MEX38203.E, January 28, 2002, on treatment of homosexuals and availability of  
24 state protection (April 2004). See also chap. 6.2, *The Economist* (London). May 21, 2005. "Out and Proud."  
25 Exhibit A-1, chap. 6.11, [MEX101377.E](#). June 5, 2006. Treatment of homosexuals and availability of state  
26 protection (May 2006).  
27 Exhibit A-1, chap. 2.1, [Country Reports on Human Rights Practices for 2005](#). March 8, 2006. "Mexico."  
28 United States. See, in particular, the introduction, and sections 1(a)(c) and (d).  
29 Exhibit A-1, chap. 6.11 and 6.1 of the documentation package.

**REFUGEE PROTECTION DIVISION – HOMOSEXUAL – DOCUMENTARY EVIDENCE – STATE  
PROTECTION – INTERNAL FLIGHT ALTERNATIVE – FAVOURABLE – MEXICO**