

NEWS LETTER

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APPOINTMENT OF ANDRÉS CALERO AGUILAR AS THIRD GENERAL VISITOR OF CNDH.

On September 26 th of the current year, National Ombudsman, José Luis Soberanes Fernández, appointed Andrés Calero Aguilar as Third General Visitor of the National Commission of Human Rights.

After highlighting that everybody grieves the death of José Antonio Bernal Guerrero, ex Chairman of said Visitorship, who died on September 21 st while he was traveling on an inspection visit to the Federal Center for Social Readaptation Number 1, " La Palma ", he pointed out that the institutional life of CNDH must continue.

CNDH demanded that the authorities in charge of the investigation work exhaustively in order to clarify the unfortunate facts in which the ex Chairman of the Third Visitorship lost his life, together with other 8 public officers, as these facts took place in a widely recognized context of specially serious challenges, which affect civic peacefulness and impair public safety.

Calero Aguilar in his turn bid to perform his duties to his best in his new post, to take advantage of the experience of the office's staff and to continue observing the current directions of the work.

Regarding the work carried out in said area, especially the one referring to the supervision of the penitentiary system and programs such as the one dealing with minors in confinement centers, women in reclusion centers and indigenous prisoners, José Luis Soberanes Fernández requested the public servers ascribed thereof to continue working in order to carry on with the projects and to achieve the goals planned.

Calero Aguilar is a graduate of the Universidad Panamericana and has post-graduate degrees in International Politics, High Management of Public Companies and Applied Economics; he has worked as a professor and in the public service he has performed functions in the Latin American Universities Committee (Unión de Universidades de América Latina), in the Ministry of Foreign Affairs, Mexican Television Institute and Mexican Radio Institute. In the CNDH he has been Head of the Criminal Matters' Department, Deputy Director of Qualification, he was ascribed to the First General Visitorship and to the Executive Secretariat and in his previous position he was the General Director of Complaints and Orientation.

RECOMENDATIONS

Recommendation 22/2005

September 30th 2005

Case: Lillian Silvana Reyes Espinosa.

Addressee authority : General Direction of the Institute of Social Security and Services for State Workers (ISSSTE).

On January 18 th 2005, the National Commission opened the file, as a result of the complaint submitted by Lilia Concepción Espinosa Paz, where she pointed out that on December 17 th , 2004, her daughter Lillian Silvana Reyes Espinoza gave birth to a child, who was hospitalized in ISSSTE's Regional Hospital "General Ignacio Zaragoza" due to abdominal strain; however, Lilia Espinosa pointed out that the medical staff who treated the newly born immediately after birth, failed to check on him thoroughly, and to make the tests that would help to determine the nature of his disease, thus delaying the surgery required by the newly born on the grounds of administrative matters such as lack of an operating room, and alleging the fact that the child was not a right holder of ISSSTE and that no anaesthetists were available. Due to the aforesaid, the child was taken to "Moctezuma" Hospital, where physicians reported that his state was critical and that said health center did not have the appropriate facilities for the attention of the severe infection symptoms that the newly born presented; therefore, he was sent to "Iztapalapa" Pediatric Hospital where he passed away.

From the evidence included in the record of the complaint, the National Commission proved violations to human rights, such as the right to life and health protection against the newly born committed by the ISSSTE's medical staff, due to the fact that they failed to provide the child with the adequate public health service, medical attention was poor since the diagnosis was issued late, which caused his death, thus failing to comply with the provisions of article 4, third paragraph of the Political Constitution of the United States of Mexico; 1st.; 2nd., section V; 23; 27, sections III and IV; 32; 33, section II; 34, section II, and 51, of the General Act on Health; 48, 71, 72 and 73 of the Rules of the General Act on Health of Medical Attention Services, as well as articles 20 and 67 of the Rules of Medical Services of the ISSSTE.

On the other hand, acting physicians did not observe the provisions related to the right to life and to health protection, set forth in international instruments, which establish the minimum standard of quality in medical services provided by the state, according to articles 12.1, and 12.2, section d), of the International Covenant of Economic, Social and Cultural Rights; 4.1 of the American Convention on Human Rights, as well as articles 10.1, and 10.2, section a), of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, in order to ensure full effectiveness and the highest quality standard of the health system for all individuals, and the recognition of the right to respect life. These provisions ratify the terms of article 4 th , third paragraph, of the General Constitution of the Mexican Republic, as regards the recognition by the State of the right of the people to enjoy a high quality medical service, taking the necessary steps towards the enforcement of said right in full. On the basis of the aforesaid, on September 30 th , 2005, the National Commission issued Recommendation 22/2005, addressed to the General Director of the ISSSTE, requesting him to order and pay the pertinent lawful compensation to Lillian Silvana Reyes Espinosa, mother of the affected child; on the other hand, the National Commission recommends that the corresponding measures be taken in order that said Institute, in case of emergency, has an operating room to deal with those situations, and that the necessary medical tests be done immediately, for the effective treatment of patients, including staff on duty and enough elements, in order to deal with critical needs and situations, thus avoiding episodes such as the one which originated the Recommendation; likewise, the National Commission recommends that instructions be given to whom it may concern, in order to inform the Control Organism, for the filing of administrative proceedings against the medical staff who treated the affected child at ISSSTE's Regional Hospital "General Ignacio Zaragoza" in Mexico, Federal District, and for informing the Public Prosecutor of the Federation, for them to start the pertinent investigation of the actions referred to in the Recommendation and to provide information on the fulfillment of the Recommendation to the National Commission.

NATIONAL ISSUES

First Virtual Rally on Human Rights 2005.

The National Commission of Human Rights, in cooperation with the National e-Mexico National System, the General Direction of Services of Academic Calculus at UNAM (DGSCA), the Swiss Embassy in Mexico, Microasist, Telmex, IBM and the YeshuaTravel Agency will carry out the "First Virtual Rally on Human Rights 2005" .

During this event, which will last two weeks between November 1 st and 19 th , 2005, participants shall answer with their knowledge of human rights' issues or searching for answers in the Internet.

This First Virtual Rally, which shall be interactive and open to the general public through the Internet, becomes an additional instrument to support the defense of fundamental guarantees, as by means of these kinds of events, people may be informed and participate in programs for the broadcasting, promotion, prevention and report of violations to human rights.

Collaboration agreement between CNDH, the State Commission of Human Rights of Quintana Roo and Local Non Governmental Organizations.

On September 28 th of the current year, the National Commission of Human Rights subscribed a collaboration agreement with the State Commission of Human Rights of Quintana Roo and with Local Non Governmental Organizations.

Before representatives of civil organizations and before the State Ombudsman, José Luis Soberanes Fernández, National Ombudsman highlighted that there is a clear correlation between the rate of economic and social development of a country and the respect for human rights.

In the celebration presided over by the entity's governor, Félix Arturo González Canto, Soberanes Fernández emphasized the years of collective effort, which have enabled people to become acquainted with fundamental rights and the public servers to be trained, in order to promote that citizens become more conscious about these fundamental rights.

In the signature of this agreement, the following participants were present: deputy Jesús Manuel Valencia Cardín, President of the Grand Commission of the XI Legislative Organism of the state; deputy José Joaquín González Castro; Cora Amalia Castilla Madrid, President of the Municipality of Otón P. Blanco and magistrate Lizbeth Luy Song Encalada, President of the Superior Court of Justice of the entity.

Collaboration Agreement between CNDH and the Ministry of Communications and Transportation .

The National Commission of Human Rights and the Ministry of Communications and Transportation signed an agreement for the broadcasting of material related to the promotion and defense of human rights, as a guide for the public in general; this task shall be accomplished through 7,500 Digital Community Centers of the site named e-Mexico.

The collaboration agreement signed by, Raúl Plascencia Villanueva, First General Visitor of CNDH, on behalf of the National Ombudsman and by Javier Pérez Mazatán, General Coordinator of e-Mexico, on behalf of the Secretary of Communications and Transportation, established that the wide broadcasting channel represented by e-Mexico National System, will allow the CNDH to increase the broadcast of human rights issues, especially information related to vulnerable groups, such as the elderly, migrant women, indigenous, girls and boys.

During the signature of the agreement, Plascencia Villanueva highlighted that the CNDH wishes to innovate and explore these kinds of ways for the broadcasting of human rights.

The CNDH celebrates the resolution of the National Supreme Court of Justice, declaring that house arrest in criminal matters is unconstitutional.

The National Commission of Human Rights celebrates the resolution issued by the National Supreme Court of Justice on September 19 th of the current year, declaring informal house arrest in criminal matters unconstitutional, as the frequent and irregular use of this resource, impairs human rights and is against the assumption of innocence of the accused ones.

The National Commission of Human Rights does not oppose the investigation of crimes by the competent authorities, but considers that the Mexican State must prioritize the necessity to materialize in our legal body the social worry represented by the figure of house arrest, which is against our Political Constitution.

After expressing their wish for the resolution, which will only be valid in the state of Chihuahua, to reach the whole country, CNDH points out that said legal figure, used by several attorneys' offices, in order to keep alleged criminals in custody for long periods, when there is not enough evidence for them to be sent immediately to court, allows all kinds of abuses from the police force, which are not punished.

The CNDH is concerned about the fact that due to the application of house arrest, carried out by public agents, the execution and effects of which are not regulated, several fundamental rights of said persons are affected, such as the right to free circulation, personal integrity, due process of law, communication and working rights, the right to the assumption of innocence and to a good name, all of which, according to article 1 st of the Political Constitution of the United States of Mexico, can only be restricted or suspended in the cases and under the conditions established therein.

As it has been highlighted in several occasions, this National Organism establishes that the absence of administrative rules brings about a disadvantage in the person undergoing house arrest, who is subject to discretionary decisions during the house arrest period, which are a breach of fundamental rights and imply an unduly exercise of the office, which not only impair the legal environment of the person in question and their families but also affect their defense, in case said person is referred to court.

Besides, the discretionary powers employed in the execution of the preventive remedy and the absence of specific procedures, make it practically impossible for the authorities to punish any excesses administratively, without prejudice to the affected person's ability to claim damages based upon jurisdiction.

The National Commission underlines that house arrest causes several side effects to the person against which is applied, due to the fact that they are deprived of the freedom to circulate and they are subjected to an investigation process, during which they must stay in one place for a long time and under surveillance of the authorities, which is against the provisions of articles 1, 11, 14 and 16 of the Constitution, as well as articles 7.1 and 7.2 of the American Convention on Human Rights and 9.1 and 12.1 of the International Covenant on Civil and Political Rights.

The effects in all life aspects of those persons subject to house arrest, in the cases in which due to isolation, secrecy of investigations, social and economic detriment, due to the impossibility of working, and in some occasions, due to the publicity of the arrest, become an arbitrary action on the part of the executing authority.

The CNDH points out that house arrest in criminal matters has ceased to be a preventive remedy to become a judicial-criminal consequence, a long lasting punishment, which has not been decreed or imposed by a judge. Therefore, the time during which a person undergoes house arrest cannot be registered as part of his punishment, as they are not in preventive prison.

Due to the existence of a big gap in our legislation as regards informal arrest, the time during which a person undergoes such measure, and who is not found to be guilty of charge is lost and must be understood as a personal sacrifice, as in legal and current terms nothing ever happens.

The National Commission of Human Rights repeats that said practice must disappear in the whole country, in order to avoid victimizing the affected person when they are transported from one entity to another, and when they are not allowed to make use of any defenses whatsoever.

INTERNATIONAL ISSUES

Meeting between the National Ombudsman and the personal representative of the Secretary General and High Representative in Human Rights' issues of the Council of the European Union.

The National Ombudsman, José Luis Soberanes Fernández, held a work meeting with Michael Matthiessen, personal representative of the Secretary General and High Representative in Human Rights' issues of the Council of Europe, Javier Solana, with whom he analyzed the current situation in the field of human rights in Mexico and the problem that this situation represents for the country.

Soberanes Fernández explained to Matthiessen the role of the National Commission of Human Rights and its interaction with the Executive Federal Power; Matthiessen in his turn described the importance that the European Union gives to human rights and their specific interest to know the state in which the respect to fundamental rights is found in our country.

Cases such as the violent episodes which took place in May last year in Guadalajara, Jalisco, as a consequence of the III Latin American and Caribbean - European Union Summit, were analyzed, which caused the National Commission to issue a Recommendation to the authorities of said entity.

The Mexican Ombudsman, also referred to the feminicides and disappearances of women in Ciudad Juárez, and to the integral Evaluation made by CNDH, which was given to the Feminicides' Commission of the Chamber of Deputies and to the government of Chihuahua, which shows the prevailing impunity and the acknowledgement by the federal government of their failure to solve the cases, as well as the need for the federal authority to reset into operation the instances created in order to coordinate and act as a link between the federal, state and municipal entities, as the results in order to clarify crimes are practically inexistent.

Soberanes Fernández invited a representative of the Council of the European Union to attend the meeting between CNDH, State Commissions of Human Rights and more than 300 Non Governmental Organizations, which will take place on 26 – 28 October, in San José del Cabo, Baja California Sur, so that the European Union checks on the dialogue existing between public organisms in human rights and civil society organizations.

In this meeting, the following participants were present: Jeremy Hobbs, first secretary of the British Embassy; Arturo Rodríguez, Coordinator of Cooperation in Human Rights and Administration of Justice of the European Delegation and Ambassador Salvador Campos Icardo, Secretary Executive of CNDH.

Training Courses

The National Commission of Human Rights, in accordance with the spirit promoted by the institution in order to spread the study, teaching and promotion of human rights, performed during September 2005 27 training activities aimed at basic, intermediate and advanced students, at vulnerable groups, elderly people and women among them, as well as public servants in the armed forces, public security officers, penitentiary staff, public health institutions' staff, Public Organisms of Human Rights, Non Governmental Organisms, among others.

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