

NEWS LETTER

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THE CNDH RECEIVED THE SUBCOMMITTEE FOR THE PREVENTION OF TORTURE OF THE UNITED NATIONS ORGANIZATION

Last August 29, this National Human Rights Commission, in its character of National Mechanism for the Prevention of Torture, met the members of the Subcommittee for the Prevention of Torture of the United Nations Organization, which was in official visit in Mexico.

The visit was done in fulfillment of what is established in the first article of the Optional Protocol of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatments or Penalties, in which the performance of periodical visits, by the Subcommittee, to the places where the people deprived of their freedom dwell, in order to prevent torture and other cruel, inhuman or degrading treatments or penalties is settled.

Throughout the development of the meeting, the National Mechanism exposed its work strategy, the methodology used to perform the visits to the detention facilities, as well as the actions taken to prevent torture and ill treatments in our country.

It is noticeable that, during a period held between September 2007 and August 2008, dates in which the National Mechanism have performed visits, 317 detention facilities depending on federal, state and municipal authorities in Campeche, Distrito Federal, Durango, Queretaro and Tabasco have been supervised.

During the meeting, both parts agreed on the importance that the strengthening of the relation between both institutions has, in order to increase the protection of people deprived from their freedom, against torture and ill treatments.

This National Organism will be observant of the development of the visit of the Subcommittee to the different detention centers in our country, to collaborate in the tasks it considers pertinent.

RECOMMENDATIONS

The following presents a synthesis of the recommendations emitted by the CNDH during the month of August. The complete version can be consulted on the website of this institution.

Recommendation 42/2008

August 20, 2008

Case: Impugnation resource of Mrs. Edmunda Pérez Avilez

Addressee Authority: H. Congress of the State of Guerrero and H. Constitutional City Council of the Municipality of Florencio Villarreal, State of Guerrero.

Last March 18, 2008, this National Commission opened the file 2008/85/4//RI, due to the impugnation resource put in by Mrs. Edmunda Pérez Avilez, against the rejection done by the City Council of Florencio Villarreal, Guerrero of Recommendation 69/2007, issued on November 29, 2007 by the Human Rights Defense Commission of the State of Guerrero.

Mrs. Edmunda Pérez Avilez stated that on February 15, 2007, in the commercial booth that she owns, located in the main square of Cruz Grande, in the municipality of Florencio Villarreal, Guerrero, the General Director of Public Security of that municipality appeared along with elements under his orders, and told her that, by command of the Mayor, they would perform the eviction of the aforementioned booth. Thus, she requested them to show any document that justified their action and, without doing it, the public officer carried out the eviction and he did not allow her the access to her business from that moment on. The action caused damage in assets estimated in \$40,000.00 (forty thousand Mexican pesos), because they demolished the booth and they took furniture, household

goods, consumption products and personal effects, among others. She added that the municipal authority omitted to notify her previously of the determination of eviction and did not consider her relocation nor any audience was given to her to communicate the issue regarding her business, though for 16 years she had been developing her commercial activity in that place.

Once the corresponding proceedings were done, the Human Rights Defense Commission of the State of Guerrero proved that public officers of the City Council of Florencio Villarreal, Guerrero, violated the fundamental rights to legality and judicial certainty against Mrs. Edmunda Pérez Avilez, so that, on November 29, 2007, the Organism issued Recommendation 69/2007. On January 7, 2008, the local Commission received the official document FV/609, dated on December 17, 2007, by which the Mayor of Florencio Villarreal and the councilors of the City Council informed that the recommendation had not been accepted.

In the consideration of this National Organism, the City Council of Florencio Villarreal incurred in a violation of the human rights, because the agreements of the Town Council adopted in the sessions held on January 12 and October 30, 2006, in which it was decided the eviction of the commercial booth of Mrs. Edmunda Pérez Avilez, action executed on February 15, 2007, result in themselves violating of the rights to legality and judicial certainty, due to, in the extension of the agreements, it was not established previously to the execution of the eviction, to grant the plaintiff the guarantee of audience to plead what it was convenient according to her right and to offer proof. This happened in spite of the fact that, in the record of the session held on October 30, 2006, that organism established that the City Council acted in a framework of legality to evict the commercial booth from the public thoroughfare.

Likewise, the plaintiff's right to legality was not respected either, because the action subject to the recommendation was not duly founded or motivated. The agreements taken by the Town Council to execute the eviction are not founded in any legal decree applicable to the case and lack motivation, because they are limited to order the action supported in the fact of Mrs. Edmunda Pérez Avilez's not answering the notifications sent to her.

This National Commission agrees with the reach of Recommendation 69/2007, since the aforesaid public officers violated the rights to personal integrity and safety, legality and judicial certainty of the aggrieved, by the illegal exercise of the public function, contravening what is ordered in articles 16, first paragraph, and 21, ninth paragraph in fine, of the Political Constitution of the Mexican United States, since the action subject to the recommendation was not duly founded or motivated.

Therefore, on August 20, 2008 this National Organism issued the Recommendation 42/2008 addressing the President of the Directive Board of the LVIII Legislature of the Free and Sovereign State of Guerrero and to the members of the H. Constitutional City Council of Florencio Villarreal, Guerrero, in which it was recommended as follows:

To the President of the Directive Board of the LVIII Legislature of the H. City Council of the State of Guerrero:

SINGLE. To give the necessary instructions to whom it may concern to determine the responsibility in which the Mayor of Florencio Villarreal and the other public officers of that City Council who have executed the actions and omissions mentioned in the present recommendation have incurred, and, in its case, to agree what is legally proper and to send the certificates with which the complete fulfillment of the resolutions is proved.

To the members of the H. Constitutional City Council of Florencio Villarreal:

SINGLE. To be so kind to instruct to whom it is relevant to fulfill Recommendation 69/2007, issued on November 29, 2007 by the Human Rights Defense Commission of the State of Guerrero, and to send to this National Commission the certificates that prove its total fulfillment.

Recommendation 43/2008

August 22, 2008

Case: Impugnation resource submitted by Mr. Juan Santos Martínez

Addressee Authority: Constitutional Governor of the State of Tlaxcala

On January 16, 2008, the National Human Rights Commission received the impugnation resource submitted by Mr. Juan Santos Martínez against the inadequacy in the fulfillment of the Recommendation 22/2005 by the Justice General Attorney's Office of the State of Tlaxcala, which was issued on September 30, 2005 by the Human Rights Commission of that state, in the file CEDHT/088/2005-1 and others.

The impugnation resource was entered in this National Organism with file number CNDH/3/2008/17/RI and, once analyzed the group of evidence that integrates it, it was noticed that the aforementioned office has not fulfilled the Recommendation in question, since the preliminary investigation 029/2006/Tlax-5 opened due to the aforesaid Recommendation on January 6, 2006, against Sergio Zainos Zainos, José Ascensión Vega Gálvez, Saúl Granados Bretón, Jacob Gutiérrez Carmona, J. Pilar Portilla Velasco and Miguel Ángel Munive Espinoza as alleged culprits of the crime of authority abuse against Mr. Juan Santos Martínez, has not been determined.

The facts stated in this Recommendation lead to the conclusion that the public service of administration of justice has been delayed without any justification, which is translated in the lack of fulfillment given to the state punitive pretension as a base of the exertion of the penal action against Mr. Juan Santos Martínez, and consequently the human rights to judicial certainty and legality have been violated. Therefore, on August 22, 2008 this National Commission addressed the Recommendation 43/2008 to the Constitutional Governor of the State of Tlaxcala, in which it is requested to give instructions to whom it is relevant to fulfill Recommendation 22/2005, issued by the Human Rights Commission of that state, in order to, as soon as possible, the preliminary investigation 29/2006/Tlax-5 is determined according to law and to inform the National Human Rights Commission of this circumstance. As well, to involve the Control Unit of the State Executive Power to start and determine, according to law, an investigation to establish the administrative responsibility of whom is responsible of the delay in the determination of the aforesaid investigation and to inform this Institution of this matter.

NATIONAL ISSUES

Towards a pact of state in public security

Due to its social transcendence and attending the presidential call to the authorities of the diverse instances of government, along with the powers of the Union, the media and the civil society to actively collaborate in the design and construction of a true national front against delinquency and organized crime, the National Human Rights Commission issued, to begin with, the following considerations and proposals:

Considerations:

For two decades, it has been insisted periodically to make legal reforms as the primordial column to find solutions to the grave social problems caused by the overflowing crime that has demonstrated to be increasingly aggressive and violent. The increase of penalties has not been enough to solve the growth of the extremely high impunity indexes; the fact of carrying on calling to that solution only or to the application of the death penalty limits the analysis of the main fact that affects and afflicts the public security, which is the lack of trustable results in the matter and the general social distrust which has been developed due to the high impunity that characterizes crime in our country.

The elements for a diagnosis point to a problem of major dimensions, mainly for the way in which the public security services operate: an impunity index that reaches 99% of the crimes committed, a growing social distrust in the police corporations, which causes that only the 10% of crimes committed are denounced; a well-known inefficiency in most of the investigations, in the detention and penal consignment of the criminals; condemning sentences in less than the one percent of the cases that get to the courts; penitentiary systems mostly inefficient and plagued with corruption.

With high indexes of crime that have resulted invincible with the measures that have come into force so far, we witness the renaissance of a subculture of impunity in which members of the public security corporations use to be involved as responsible of committing or being accomplices of the crimes that aggrieved thus the society, such as homicides or kidnappings. The gangs, organized and supplied, count with the inefficacy and lack of coordination of the institutions as the best guarantee for their members that they will not be detained and, far from it, that they will be submitted to a penal process.

A founded diagnosis of the problem of public security does not require great knowledge or complex studies to identify the state in which it currently is. However, society and government must keep away from the discourse of the media and must add solutions for the general advancement and recovery of social peace. The right scheme of public security will be that which achieves the reversion and modification with good results of the grave situation of impunity which we have reached.

The atmosphere of insecurity that, in a new chapter of the same and prolonged crisis, affects Mexican society, demands fully coordinated measures between the federal government and the state and municipal governments – real State Agreements – that allow the Government in its whole to fulfill the primordial duty of offering an adequate public security.

In the current circumstances, all the social forces must focus to achieve a base of minimal agreements about the points of discussion which lead the vision and the analysis of the problem and that allow the definition of proposals.

The delivery of results is fundamental to explain why the crime indexes present a constant tendency to increase during the last twenty years. A qualitative and quantitative evaluation of the state in which we are is necessary; we must know the efficiency of the public expense and the institutional efficacy dedicated to fight the impunity of crime.

A strict institutional reengineering against impunity must overthrow the enormous delays in the performance of the public security service (such as the chronic unfulfillment of summon and/or arrest orders; the insufficient basic respect to the fundamental rights, the extreme difficulty and bureaucratism to accomplish the right to the amendment to the damages to the victims) and, as well, must promote the achievements and advances by means of the coordination among institutions, the gathering, efficient use and custody of information of police intelligence available, the technological modernization and the training and professionalization of public security officers.

An open participation, really representative of the social interest must, by force, be in a non-party, non-corporation basis. The schemes of citizen participation by means of Citizen Committees in the Matter of Public Security must be supported by the Congress or by the local legislatures, and must be able to present, before the authorities responsible of the prevention and investigation of the crimes, real data and systematical appreciations about the way in which the actions to fight crime are being locally efficient, and if it is the case, to be able to alert timely the turn of the public actions if they are directed to any different objective to that of assisting and solving the detected problems.

Establishing procedures for the selection and designation of the personnel responsible of the security is another important aspect. Unfortunately, the performance of many of those who are responsible for the public security and the confidence control measures have not resulted to be according to the needs of reality. More objective criteria are necessary for the incorporation of the public officers in the public security areas, for the procedures of removal to prevent them from being judge and party when they are being investigated, evaluation of results, knowledge, training and experience as elements who can help in the fulfillment of public responsibilities, according to the Constitution and the juridical framework that must rule any act of authority.

INTERNATIONAL ISSUES

Regional Seminar on the follow-up of the recommendations of the Organs of Treaties

From August 27 to 29 of the current year, the Regional Seminar on the follow-up of the recommendations of the Organs of Treaties was held in the city of Panama, Panama, organized by the High Commissioner Office of the United Nations for the Human Rights. In the seminar, six work groups from Argentina, Colombia, El Salvador, Guatemala, Mexico and Panama participated. The groups of each country were formed by officers of the Ministry of Foreign Relations, National Institutions, members of the civil society, media and a representative of a Specialized Organism of the United Nations.

The aim of the Seminar consisted on reviewing the experience of the different countries in the fulfillment of the recommendations of the Organs of Treaties, as well as the obstacles and advances in such fulfillment. To do it, work groups were organized, first by professionals, then by countries to interchange experiences and, finally, the good practices were identified to be applied in the respective countries. With this aim, concrete plans were produced to monitor the fulfillment of the recommendations of the organs of treaties that involve actions of each member of the group.

Among the points of this compromise, there are:

- Systematize the recommendations of the organs of treaties;
- Spread the recommendations of the organs of treaties;
- Promote among the Executive, Legislative and Judicial Powers the fulfillment of recommendations of the organs of treaties, and
- Training the public officers in the fulfillment of the international compromises about human rights, with special attention to the recommendations of the organs of treaties.

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