



Comisión Nacional de los Derechos Humanos

México

Recommendation 041/2010

The following is a synopsis of the recommendation emitted by the CNDH . The complete version may be consulted on this institution's web page.

Mexico City, July 6th, 2010

Subject: About the recourse of impugnation of "V1" and others

Authority Responsible:

Honorable Congress of the State of Oaxaca and

Honorable Town Hall of Magdalena Apasco, ETLA, Oaxaca

On August 24th 2009, the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca received V1's complaint due to alleged human rights violations committed to his detriment and that of V15, V4 and V14, attributable to civil servants of the Town Hall of Magdalena Apasco, ETLA, Oaxaca, causing the initiation of complaint file CDDH/1125/(06)/OAX/2009.

Regarding these events, V1 declared that on August 24th 2009, the municipal president and the municipal representative of this municipality, together with some inhabitants, dug trenches in the vicinity of their homes and, with the help of heavy construction equipment, they cut V1, V3 and V18's drinking water supply; furthermore, they closed the accesses to the community therefore keeping the victims from entering the area.

On January 14th 2010, the state commission also received the complaint filed by V2, in light of alleged human rights violations to his detriment and that of V5, V6, V7, V8, V9, V10, V11, V12, V13, V14, V15, V16, V17 and V18, attributed to the municipal representative of the Town Hall of Magdalena Apasco, ETLA, Oaxaca. Complaint file CDDH/046/(06)/OAX/2010 was therefore initiated.

Regarding these events, V2 declared that on November 27th 2009, a group of about 200 of the community's inhabitants, lead by the municipal representative, presented itself at the homes of each one of the victims and cut their drinking water supply. The representative explained that their situation had to be presented before a general assembly in order for the town to decide whether or not their supply would be restored.

Given that the events mentioned in both complaint files were considered to be related, on the 9th of February 2010, the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca decided to combine them.

After assembling the complaint file and the file it was combined with, the state human rights protecting body issued recommendation 04/2010 on March 10th 2010, addressed at the members of the Town Hall of Magdalena Apasco, Etlá, Oaxaca, in the following terms:

First. Instruct the person responsible to immediately proceed with the reestablishment of the drinking water supply in favor of citizens V1, V3, V2, V5, V6, V7, V8, V9, V10, V11, V12, V13, V14, V15, V16, V17 and V18.

Second. Issue instructions to the Municipal President and the Municipal Representative of Magdalena Apasco, Etlá, Oaxaca so that they refrain from engaging in acts of deprivation or discomfort which are not rightfully justified or approved by the law against the offended or their families, homes, properties, possessions, assets, rights or against any other citizen who stands by what they represent.

On April 16th 2010, the National Commission received the official missive VG/96/2010, through which the human rights commission of Oaxaca forwarded the recourse of impugnation due to the unacceptance of recommendation 04/2010 by the Town Hall of Magdalena Apasco, Etlá, Oaxaca.

The recourse was lodged within file CNDH/4/2010/101/RI, to which the report and evidence supplied by the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca were added.

From the logical-juridical analysis of the entirety of the evidence which makes up the present recourse of impugnation, it was possible to see that the Human Rights to legality and legal certainty, to health, freedom of movement and to no discrimination were violated to the detriment of V1, V2, V3, V4, V5, V6, V7, V8, V9, V10, V11, V12, V13, V14, V15, V16, V17 and V18. These were committed by the municipal authorities of Magdalena Apasco, Etlá, Oaxaca.

As a result, the state Human Rights Commission declared that the human rights of the offended were indeed infringed upon when they were deprived of drinking water by the municipal authorities of Magdalena Apasco, Etlá, Oaxaca without any justification whatsoever, although this was probably done in retaliation for running and exploiting the marble and onyx mines located within that community.

Along these lines, the National Commission declared that the human rights to no discrimination, health, freedom of movement, legality and legal certainty of the offended, contained in articles 1, third paragraph, 2, section A, 4, third paragraph, 11, 14, second paragraph and 16, first paragraph of the Political Constitution of the United Mexican States, were transgressed.

In light of these events and based on what is stipulated in articles 65 and 66, clause a), of the Mexican National Human Rights Commission Law, as well as article 168 of its internal regulations, the Commission for the Defense of Human

Rights of the Free and Sovereign State of Oaxaca's final resolution is confirmed. The following recommendations are thereby respectfully made:

To you, Madame President of the Board of Directors of the Honorable Congress of the state of Oaxaca:

First. Issue the appropriate instructions in order for whomever is responsible to begin an investigation, as stipulated by the law, in order to define the responsibilities in which civil servants from the municipality of Magdalena Apasco, Etna, Oaxaca may have incurred after failing to comply with recommendation 04/2010 issued by the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca, as well as failing to respond to a request for information. Proof of compliance must be sent to the National Commission.

Second. Urge the town hall of Magdalena Apasco, Etna, Oaxaca to present the reports requested by the Mexican National Human Rights Commission in order to abide by what is stipulated by the law of this institution dedicated to the defense of human rights.

To you, the members of the Town Hall of Magdalena Apasco, Etna, Oaxaca:

First. Proceed to instruct whomever it may concern so that recommendation 04/2010, issued on the 10th of March 2010 by the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca, is fulfilled; proof of absolute compliance must be sent to the National Commission.

Second. Issue instructions in order to collaborate with the prior investigation initiated as a result of the declaration presented by the National Commission to the Office of the District Attorney of the State of Oaxaca in light of the considerations mentioned within the observations chapter of this document due to their likely involvement in the events which obstructed the points of entry of the community of Magdalena Apasco, Etna, Oaxaca. All evidence requested must be delivered.