



Comisión Nacional de los Derechos Humanos

México

Recommendation 46/2011

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, August 26th, 2011

SUBJECT: ABOUT THE RECOURSE OF IMPUGNATION OF V1 AND V2

AUTHORITY RESPONSIBLE: PRESIDENT OF THE BOARD OF DIRECTORS OF THE HONORABLE CONGRESS OF THE STATE OF OAXACA'S LX LEGISLATURE, CITIZEN MEMBERS OF THE HONORABLE CITY HALL OF OAXACA DE JUÁREZ, OAXACA

On the 25th of March 2010, the National Commission received the recourse of impugnation filed by V1 and V2 against the City Hall of Oaxaca de Juárez, Oaxaca, because of its incomppliance with Recommendation 29/2009, issued on November 12th 2009 by the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca.

On March 24th 2009, V2's complaint was received at the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca. It was filed due to alleged human rights violations to the detriment of the victims, attributed to civil servants from Oaxaca de Juárez, Oaxaca, resulting in the initiation of file of complaint CDDH/394/(01)/OAX/2009.

In relation to the facts, V2 declared that at approximately ten hundred hours on March 24th 2009, AR1 and several other individuals, including members of the auxiliary police force of this municipal agency, arrived at the dwelling inhabited by V1, V2, V3 and V4 to inform him that their drinking water supply would be cut off, arguing that they were wasting this vital liquid. This led AR1 to give orders to drill a hole and cut off the victim's aforementioned service.

After assembling the file of complaint, the state Human Rights Commission issued Recommendation 29/2009 aimed at the Municipal President of Oaxaca de Juárez, Oaxaca in the following terms:

First: Instruct AR1 to immediately reestablish the drinking water supply of V2 and V3 after the dues for the years 2007, 2008 and from January to March 24th 2009, the date on which their supply was interrupted, have been paid together with fines resulting from water wastage.

Second: Begin and conclude the administrative procedure of responsibilities against AR1, imposing upon him all applicable sanctions due to his unlawful exercising of civil service and his incomppliance with the precautionary measures

dictated by the Commission, considering that through such omission the lack of any desire whatsoever to attend the matters which are his responsibility has become clearly visible.

Third: If the existence of events which may constitute a crime is revealed during the elaboration of the aforementioned administrative investigation or thanks to its outcome, the Public Prosecutor's Office must be notified so that it begins and assembles the corresponding investigation if necessary, deciding whether or not to use penal action within the timeframe permitted by law.

Fourth: Issue written instructions to whomever it may concern so that all personnel working within this Agency is subjected to compulsory education on human rights, reminding you that the Commission is happy to provide you with specialized personnel for such task. This is with the aim of avoiding the repetition of actions which violate human rights, such as the ones analyzed here, by the municipal authorities of Trinidad de Viguera, Oaxaca.

Thanks to the logical juridical analysis performed on the entirety of the evidence which is part of this recourse of impugnation, it is possible to determine the occurrence of violations to the human rights to legality, legal certainty and to health to the detriment of V1, V2, V3 and V4, committed by municipal authorities of Oaxaca de Juárez, Oaxaca, as well as by authorities pertaining to the municipal agency of Trinidad de Viguera, Oaxaca.

As a matter of fact, the National Commission noticed that by cutting the drinking water supply without applying any prior procedure and conditioning its reestablishment to the payment of a sum of money deriving from a discretionary measure which did not attain to the appropriate proportion of public spending contributions, the victims' human rights to health, legality and legal certainty contained within articles 2, clause A, sections I and II; 4, third paragraph; 14, third paragraph and 16, first paragraph, of the Political Constitution of the United Mexican States, were violated.

Therefore, as Recommendation 29/2009 was lawfully grounded and motivated, it should have been fulfilled by the authorities of the Municipality of Oaxaca de Juárez, Oaxaca, through the municipal agency of Trinidad de Viguera. The National Commission feels that the failure to do so may be interpreted as a disdainful attitude towards the culture of legality, as well as a lack of collaboration on the duty of the non-jurisdictional protection of human rights carried out by the country's public human rights protection bodies, specifically the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca. In addition, civil servants must abide by the law and ensure its enforcement in order not to incur in actions which violate human rights such as those which led to this Recommendation. The recommendations issued by public institutions require good will, political will and more support on behalf of the authorities which receive them in order to be accepted and complied with.

As a result, and based on what is stipulated in articles 65 and 66, clause d) of the Mexican National Human Rights Commission Law, as well as article 168 of its internal regulations, the incomplete fulfillment of the Recommendation issued by the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca was reconfirmed and lead to the issuance of the following:

Recommendations

To you, the government delegate who presides over the Board of Directors of the LX the Congress of the Honorable state of Oaxaca's LX Legislature:

First. Issue the necessary instructions to whomever it may concern in order for an investigation to be initiated in accordance with the law to determine the responsibilities in which civil servants from the municipality of Oaxaca de Juárez, Oaxaca may have incurred. This is because of the incompliance of Recommendation 29/2009 issued by the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca as well as because of their lack of response to the request for information. Proof of compliance must be sent to the National Commission.

Second. Urge the City Hall of Oaxaca de Juárez, Oaxaca to submit the reports requested by the Mexican National Human Rights Commission in order to comply with what is stipulated in the Commission's governing law.

To you, the members of the Honorable City Hall of Oaxaca de Juárez, Oaxaca:

First and last. Instruct whomever it may concern to proceed with the fulfillment of Recommendation 29/2009, issued on the 12th of November 2009 by the Commission for the Defense of Human Rights of the Free and Sovereign State of Oaxaca; sending proof of its total compliance and observance to the National Commission.