



Comisión Nacional de los Derechos Humanos

México

Recommendation 81/2011

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, December 14th, 2011

SUBJECT: ABOUT THE CASE OF CRUEL TREATMENT TO THE DETRIMENT OF V1

AUTHORITY RESPONSIBLE: SECRETARY OF NATIONAL DEFENSE

On February 20th 2009, at between 20:30 and 21:00 hours, 18 year old V1 was at his home ingesting alcoholic beverages with some neighbors and then left to return a neighbor to his home using the truck of Q1. He did so at approximately 23:00 hours and when he crossed the intersection of 110th street and Moctezuma, within the Tierra Nueva quarter, personnel from the Armed Forces and from "mixed units" (formed by both police officers and soldiers) were searching a house whilst the soldiers on the street ordered V1 to stop, who failed to do so because he was under the influence of alcohol and because he feared they might take the truck from him.

As a result, Mexican Army personnel fired at him, causing him to stop a few meters ahead. As he was hurt, he was taken to the Ciudad Cuauhtémoc Healthcare Center, the *Dr. Javier Ramírez Topete* General Hospital, where he was admitted because of being injured by a firearm projectile. However, as Mexican Army personnel stated that they had found 350 grams of marijuana, a .357 caliber pistol, ammunition for such gun and a fragmentation grenade on V1, he was handed over to the head of the Itinerant Investigative Mesa of the Public Prosecutor's Office of the Federation. He, in turn, attested to the injuries presented by V1 on February 22nd 2009 and issued an agreement to try the case as a part of Preliminary Investigation 1 on the same day, initiating a criminal proceeding against him because of being a probable suspect of committing the crimes of carrying a firearm exclusively intended for use by the Mexican Army, Navy and Air Force and a crime against health by possessing marijuana for resale purposes.

On February 27th 2009, the social representative of the Federation issued an official document in which he stated that, as events which probably resulted in the commission of a crime had taken place and those most likely suspects seemed to be members of the military, a certified copy of Preliminary Investigation 1 had to be sent to his counterpart with military jurisdiction in order for him to proceed in accordance with military law. This led to the initiation of Preliminary Investigation 2, which is currently underway.

On February 28th 2009, a Criminal Judge of the Benito Juárez Judicial District in Ciudad Cuauhtémoc, Chihuahua State, issued an imprisonment order against V1 due to his commission of the aforementioned crimes and handed the case over to the corresponding District Judge headquartered in the city of Chihuahua due to jurisdictional reasons, as the offences in question are classified as federal crimes. This caused Judicial Inquest 2 to be initiated by a District Court within the previously mentioned state, where the judge of the Second Single judge Tribunal of the Seventeenth Circuit emitted its sentence for the corresponding Toca. This sentence dictated a four year and ten month prison sentence and a fine for V1. Who was denied the benefit of prison sentence substitution and the benefit of a conditional sentence. V1 therefore filed a criminal appeal through his lawyer, which was resolved on October 11th 2010, when he was denied the protection of federal justice. This is the reason why he is currently an inmate of the *Aguiles Serdán* Social Re-Adaptation Center (CERESO) in Chihuahua State.

From the logical-legal analysis performed on the entirety of the evidence contained within complaint file number CNDH/2/2009/1240/Q initiated due to these events, the Mexican National Human Rights Commission confirmed violations of the human rights to personal integrity and safety, to proper treatment, to legality and to legal certainty, to the detriment of V1. They resulted from actions consisting in the arbitrary use of public force and cruel treatment by Mexican Army personnel during the events which took place on February 30th 2009 in Ciudad Cuauhtémoc, Chihuahua.

In light of these events, the Mexican National Human Rights Commission has considered it necessary to respectfully issue the following **Recommendations**:

To you, Mr. General and Secretary of National Defense:

First. Take the necessary steps to repair the damage inflicted upon V1 by means of the appropriate compensatory payment and through the medical, psychological and rehabilitation assistance needed to return his physical and psychological health to the way it was before his human rights were violated. The National Commission must be told about the result.

Second. Instruct whomever it may concern so that the application of the “Human Rights Program, Secretariat of National Defense (S.D.N.) 2008-2012” and the “Program for the Promotion and Strengthening of Human Rights and International Humanitarian Law S.D.N. 2010” is intensified. These programs must be aimed at the middle and upper ranks as well as at the officers of the Army and effectiveness indicators must be created to evaluate the beneficial impact of this training on respect for human rights. Proof of compliance must be sent to the national commission.

Third. Instruct the necessary persons in order for the civil servants of the Secretariat of National Defense to refrain from manipulating crime scenes, ordering them to be manipulated, tolerating their manipulation and/or the distortion of their historical and legal facts. They must also be trained on the preservation of criminal evidence and, once this has been done, proof of compliance must be forwarded to the national commission.

Fourth. Collaborate generously with the Mexican National Human Rights Commission during the filing and processing of the complaint it presents before the General Inspection and Comptrollership Body of the Mexican Army and Air Force against the civil servants of the Secretariat of National Defense who were involved in the events condemned in this case. All evidence requested must be sent to the national commission together with proof of compliance.

Fifth. Amply collaborate during the filing and follow up of the declaration of events presented by the national commission to the Attorney General's Office and the Office of the General Attorney of Military Justice, respectively, in order for them to initiate the legally corresponding preliminary investigation in accordance with their jurisdictions given that the behavior of federal civil servants led to the recommendation at hand. Any proof of compliance requested must be sent to the national commission.

Sixth. Take the necessary steps to properly regulate the operation of roadblocks and check points, also establishing standard operational parameters and signals. This aims to ensure the respect for the integrity of the people as well as to guarantee that public force and lethal weapons are only used when strictly necessary, when death is imminent or when Mexican Army personnel or other individuals have been severely wounded.