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SPECIAL REPORT ON THE FULFILLMENT OF THE OBLIGATIONS ESTABLISHED IN THE REFORMS TO ARTICLE 18 OF THE CONSTITUTION IN THE AREA OF JUSTICE FOR MINORS.

On September 13th, 2006, José Luis Soberanes Fernández presented the Special Report of the National Commission of Human Rights on the Fulfillment at the National Level, as well as in the Federative Entities and the Federal District, of the Obligations Established in the Reforms to Article 18 of the Constitution in the Area of Justice for minors.

The National Ombudsman, José Luis Soberanes Fernández, manifested that the documented information for this Special Report was obtained from the requests sent by the CNDH to 151 responsible authorities, five of which ignored the informative requirements and did not answer, those authorities being the states of México, Guerrero, and Morelos, as well as the Superior Tribunals of Justice of Tlaxcala and Oaxaca.

He highlighted the fact that, according to information proceeding from the INEGI, corresponding to 2005, more than 40 percent of the population of the country is between 0 and 19 years of age while broad sectors of that population group confront elevated conditions of poverty and marginalization, in such a way that one of the factors that supports the fact that more and more minors incur in antisocial conducts is precisely their social condition, which goes hand in hand with the real under utilization of the rights granted by the law.

The report of the CNDH presents 13 observations and conclusions, among which are included: remove minors who are currently found in internment centers and that did not commit antisocial conducts qualified as serious; effectuate the relocation to the internment centers of persons below 18 years of age and those that upon committing the antisocial conduct were not yet 18, who are presently found within reclusion centers for adults; implement security measures of the internment centers for minors; so that, the states whose legislation has established the minimum legal age at less than 18, in accordance with the principle of retroactivity that article 14 of the Political Constitution foresees, interpreted *contrario sensu*, analyze and, in the cases of those minors that are subject to processing or who were sentenced, and that are found in the hypothesis of the new system of justice for minors, quicken the necessary legislative work, within the local congresses, with the finality of approving as soon as possible the new legislation in the area of justice for minors; the construction of more internment centers, and more specialized training.

RECOMMENDATIONS

Recommendation 32/2006
September 1st, 2006.

Case: Appeal submitted by Mrs. Lourdes C. González Saravia.
Addressee Authority: Constitutional Government of the State of Veracruz.

The National Commission opened the file 2005/205/VER/4/RI, motivated by the appeal submitted by Mrs. Lourdes Concepción González Saravia, against the non acceptance of Recommendation 15/2005, on the part of Ministry of Health and Assistance and the General Director of Health Services of the State of Veracruz, issued by the State Commission of Human Rights of that state.

On March 31st, 2004, the minor of 10 years of age, María de los Ángeles Sánchez González, was operated on in the Regional Hospital of Poza Rica, Veracruz, since she was diagnosed with a case of acute abdomen with the possibility of appendicitis, nevertheless, during the surgical procedure, the stated diagnosis changed, bringing about the request for a vascular surgeon, who was integrated into the surgical procedure two hours later and determined that the problem which the patient was presenting was due to the rupture of the right ovary, requiring the intervention of the gynecologist so that the extirpation of that organ may be carried out, which it was one hour later. Finally, after almost five hours which the operation lasted, the minor was moved to the intensive care unit, where she passed away on April 2nd, 2004.

That same day, the agent of the Public Prosecutor's Office of Poza Rica became aware of the events mentioned, and opened the ministerial investigation PZR/157/2004, which up to the present moment is still pending.

In attention to the complaint presented March 29th, 2005, the state commission issued Recommendation 15/2005, addressed to the Ministry of Health and Assistance and the General Director of Health Services of Veracruz, nevertheless, said authority did not accept it.

From the analysis of the evidence, the CNDH coincided with the criteria sustained by the State Commission of Human Rights of Veracruz, upon detecting violations of the human rights to life and protection of health in detriment of the minor, María de los Ángeles Sánchez González, as the ascribed personnel of the Regional Hospital of Poza Rica, Veracruz, provided her with deficient medical attention.

Based on the above, on September 1st, 2006, the National Commission issued Recommendation 32/2006, addressed to the Governor of Veracruz, to instruct the corresponding persons to initiate the proceeding of administrative responsibility upon the doctors Juan Manuel Alonso Rivera, Alfonso Sánchez Nájera y María Antonieta García Tapia, ascribed to the Regional Hospital of Poza Rica, Veracruz, in the terms of the first point of Recommendation 15/2005, issued by the State Commission of Human Rights of Veracruz; as well, so that instructions may be served to the responsible persons with the objective that full completion of the second and third points of the mentioned Recommendation is given.

Recommendation 33/2006
September 14th, 2006.

Case: minor DJLC.
Addressee Authority: National Migration Institute (INM).

On April 19th, 2006, personnel of the CNDH received the complaint formulated by the minor DJLC, a Honduran national, in which he expressed that on April 14th, 2006, he was captured and then escaped, being held in the migratory station, nevertheless was later captured by a federal migration agent, who ordered him to board the vehicle and tied him up by the feet and hands. Upon arriving to the migration station, he was placed in a "dark room", where he remained for four days, handcuffed by the feet and with the right hand bound to a tube, as well as receiving threats and hits from a private security guard nicknamed "el Chivo" (the goat), and visited by the same agent who had captured him, who made fun of his situation.

From the analysis of the evidence, it was accredited that personnel of the INM, violated the human rights of the minor, DJLC. It is necessary to point out that the conduct of the minor who is the victim in this case, having escaped, does not justify the action taken by the public servers of the INM, since the applicable norm establishes that the disciplinary corrections can constitute, among other things, the temporary separation from the rest of the population, but only in the cases in which it is accredited that the life, safety, and the order of the persons held, or the infracting persons themselves, are put in jeopardy, and it will be in a place that will be within view of the other persons in captivity, with the right to have communication with trusted people by the person, and strict respect for their human rights; as well, this sanction must be the consequence of an administrative proceeding.

In the same manner, this National Organism accredited that employees of the private security company TRIPLEX, has a permanent and direct contact with the migrants in captivity, and carry out actions reserved for public servers of the INM.

In view of this, the CNDH, on September 6th, 2006, issued Recommendation 33/2006, addressed to the Commissioner of the INM, in which it was requested that the Internal Organ of Control be notified so that it may initiate and determine the administrative proceedings against the public servers involved in the events; that the General Attorney's Office of the Republic intervene so that, in accordance with its norms, it initiates the preliminary investigation against the coordinator and official of the private security company TRIPLEX; the responsible persons be instructed that those private security employees be definitively separated from the migratory station in Saltillo, Coahuila; as well as in the future, this type of employee, while in the performance of their activities, must not carry out functions designated for migratory authorities; instructions may be sent to the responsible persons to the effect that the existence places like

"dark rooms" may be cancelled; and that instructions may be sent that directives are established and that public servers of the INM may be trained in the prevention of abuses.

Recommendation 34/2006
September 8th, 2006.

Case: of ADEO.
Addressee Authority: General Attorney's Office of the Republic (PGR).

The CNDH received the complaint of T1, from the State Commission of Human Rights of Sonora, which stated that on January 21st, 2006, elements of the municipal police and a person claimed to be an agent of the Public Prosecutor's Office the Federation, violently broke into the domicile of ADEO. One of those public servers of the police made him kneel, and, with his hands on the floor shot him with his firearm in the nape. Afterwards, the public servers referred to fled.

Upon the complainant finding himself wounded, ADEO requested help from the municipal police, who refused to give him help.

Of the analysis of the evidence that the CNDH gathered, it was able to be accredited the violations of the rights to life as well as to the right to legality and judicial certainty, related to the execution of ADEO in fulfillment of an order of search and seizure, based on the inappropriate exercise of public function and irregular integration of the preliminary investigation, attributable to public servants of the PGR and to the elements of the preventive police in Hermosillo, Sonora commissioned to the Mixed Unit of Attention to Drug Trafficking.

It did not go unnoticed that the Public Prosecutor's Office of the Federation consigned the preliminary investigation against the public servers that intervened in the events, as well as that the Honor, Selection, and Promotion Board of the General Direction of Public Security of Hermosillo, Sonora, initiated an administrative proceeding against the public servers, suspending them. Nevertheless, some investigations remain pending, as well as to impose corresponding sanctions and adopt the measures that guarantee the non repetition of the similar acts.

Based on the above, the CNDH, on September 8th, 2006, addressed Recommendation 34/2006 to the general attorney of the republic, to the constitutional Governor of the State of Sonora and the municipal president of Hermosillo, Sonora, in which it the general attorney was requested to carry out the diligences for fulfilling the order of apprehension that the sixth judge of the first instance released against SP4, continue with the integration of the preliminary investigation against SP1, SP2, and SP3, agent of the Public Prosecutor and elements of the preventive police, respectively; inform the chief of the General Visitorship of the PGR so that the evaluation is carried out of the integration of the indagation AP/PGR/SON/HER-II/094/06, and in case of finding some irregularity, informing the Internal Organ of Control; inform the Internal Organ of Control in the PGR, so that it initiates and determines an administrative proceeding against SP1; establish with clarity the prohibition of using "social service providers" in ministerial diligences; reparation of damages caused to family members of ADEO; take the administrative measures so as to prevent the repetition of acts like those which brought about the present Recommendation; offer promptly aid to the victims and witnesses of the event and take security measures to prevent acts of intimidation or reprisals against the witnesses and relatives of the deceased; finally, establish training courses for elements of the PGR, so that they execute search and seizure orders which guarantee the respect for life, corporal integrity, dignity, liberty, patrimony of persons and which privilege the employment of non-violent means.

To the constitutional governor of the State of Sonora, it was recommended that he send instructions to the local public prosecutor to fulfill the apprehension order mentioned; offer help to the victims and witnesses of the events, to take security measures to prevent acts of intimidation and reprisals against the witnesses or family members of the deceased.

To the major of Hermosillo, Sonora, it was recommended that instructions be sent to determine the administrative proceedings against the public servers of the General Direction of Public Security implicated in the events; establish training courses for the elements of municipal public security that guarantee an adequate public security and respect for human rights, privileging the employment of nonviolent means; repair damage caused to family members of ADEO; offer aid to the victims and witnesses of the events, and take security measures to prevent the carrying out of acts of intimidation or reprisals against the witnesses or family members of the deceased.

Recommendation 35/2006
September 14th, 2006.

Case: Appeal submitted by Mr. Carlos Agustín Ahumada Kurtz.
Addressee Authority: Commission of Human Rights of the Federal District.

The CNDH initiated the file 2006/50/1/RI, motivated by the appeal submitted by Mrs. Cecilia Gurza González, in which she declared as a offense the resolution that was dictated on January 13th, 2006, by the Commission of Human Rights of the Federal District in the complaint CDHDF/122/04/GAM/P2032.000, for acts committed against her spouse, Carlos Agustín Ahumada Kurtz.

The local organism offered a proposal of conciliation to the then Minister of Government of the Federal District upon discovering, among other aspects, that the right to personal intimacy, personal integrity, health, human dignity, non discrimination, and the rights of prisoners of Mr. Ahumada Kurtz were violated, from inappropriately taking photos of them at his entrance into the Preventive Male Reclusion Center North. Said proposal of conciliation was not accepted by the authority as it was deemed that the human rights of the victim were not violated.

During the integration of the file CDHDF/122/04/GAM/P2032.000, the local organism requested the General Director of Human Rights of the Public Prosecutor's Office of the Federal District to collect the declaration of Mr. Ahumada Kurtz to denounce the event, which brought about the initiation of the preliminary investigation FGAM/GAM-4T2/1462/05-08, which the local instance also included in the Program of the Fight against Impunity.

Upon deeming that the responsible authority, as well as others in collaboration, carried out actions tending toward alleviating, avoiding, and preventing violations of human rights against the person in disagreement, among them being the start of the preliminary investigation mentioned, the local commission accorded on January 13th, 2006, the conclusion of the already opened complaint file considering that the issue had been resolved during the process of waiting for the results of the file.

From the analysis of the documentation, it follows that the local organism omitted requesting the initiation of the administrative proceedings against the responsible public servers. As well, the local organism has left out the fact that the indagation initiated has still not been resolved within one year of its opening.

The local organism omitted as well to consider the intervention that public servers of the government of the Federal District had in the events, who authorized the access of the communication media into the interior of the reclusion center and permitted that they take photographs of the person in inconformity, and did not suggest that the competent Internal Organ of Control should be informed so that the behavior of the public servers might be investigated and sanctioned in its terms.

In the same manner, the local instance, in its resolution, deemed that it lacked the competence to decide on the negative on the part of the interdisciplinary technical council to authorize the victim to carry out interviews with communication media, arguing that it dealt with a resolution analogous to the jurisdictional, that being despite the fact that the resolution of reference does not correspond to a sentence or decision, definitive or interlocutory, or even emanating from a jurisdictional organ, but rather from a colleague organ responsible for determining the policies, action, and strategies for the functionality of the reclusion centers of the Federal District.

Based on the above, on September 14th, 2006, the CNDH issued Recommendation 35/2006, addressed to the President of the Commission of Human Rights of the Federal District, in which it was requested he send instructions so that the reopening may be granted of the complaint file CDHDF/122/04/GAM/P2032.000, and based on the considerations planted in the chapter of observations of Recommendation 35/2006 the determination should be emitted that is in agreement with the Law.

Recommendation 36/2006
September 26th, 2006.

Case: Appeal submitted by Mr. Feliciano Vázquez Jiménez and others.
Addressee Authority: H. City Council of Tezonapa, Veracruz.

On March 24th, 2006, the National Commission opened the file 2006/107/1/RI, motivated by the appeal submitted by Mr. Feliciano Velázquez Jiménez, stemming from the non acceptance of Recommendation 93/2005, that the State Commission of Human Rights of Veracruz addressed, on November 29th, 2005, to the H. City Council of Tezonapa, Veracruz, derived from the file Q-3379/2005.

Through a text dated April 29th, 2005, presented on May 2nd, of the same year, the complainants Feliciano Velázquez Jiménez, Clemente Ortiz Pucheta and Isidoro Sánchez Ortega, in their character as representatives of the Union of Market Merchants of Córdoba and the Region, pointed out that they are a group of merchants that have been working in distinct municipal seats and hill country congregations of the municipality of Tezonapa, Veracruz; however, the major of this place, with no reason whatsoever, ordered, with a written order, that no permit would be authorized for street vendors that do not belong to that municipality, and that the stated written order had been brought to the attention of municipal agents, to whom it was also made known that the charge for the right to floor space would be effectuated directly with the director of municipal commerce and not in the municipal agencies as they had been, and that they were removed from the communities of Almilinga, Caxapa, Ixtacapa, El Cedro, Laguna Chica, Paraíso, Morelos and Villanueva, all in the municipality of Tezonapa, Veracruz, which is an abuse of authority.

Deriving from the above, the State Commission of Human Rights integrated the file Q-3379/2005, and proposed a conciliation with H. City Council of Tezonapa, Veracruz, which was not accepted either, with the argument that no person was discriminated against, which

lead to, on November 29th, 2005, said organism issuing Recommendation 93/2005, addressed to the same authority, which reiterated its non acceptance.

The National Commission requested from the City Council of Tezonapa, Veracruz, the corresponding report, and on June 20th, 2006, through a document with no number, the trustee of the municipality answered and reiterated the non acceptance of Recommendation 93/2005, in view of the fact that the decisions of the city council are made by the cabinet entirely, manifesting that as well the municipal authority can restrict or limit the liberties of commerce and industry in function of the public interest of the society, with the finality these activities may not occur in places where the common good is compromised, for which the merchants must meet the requisites that the Rules of Police and Good Government demands.

From the analysis carried out of the evidence, the CNDH shares the criteria that the State Commission sustains in the sense that the human rights to equality, work, legality, as well as judicial certainty of Mr. Feliciano Velázquez Jiménez and others were violated in their detriment, by the authorities of the municipality of Tezonapa, Veracruz, when they ordered the municipal agent from San Jorge Atitla no to grant any permit for carrying out their commercial activity to people who were not native to the said municipality.

Based on the expressed information, the National Commission, on September 26th, 2006, issued Recommendation 36/2006, to H. City Council of Tezonapa, Veracruz, in which it confirmed the Recommendation issued by the State Commission, and recommended that the responsible persons be instructed to the end that Recommendation 93/2005, issued by the State Commission of Human Rights of Veracruz be fulfilled.

NATIONAL ISSUES

Training Courses

The National Commission of Human Rights, in strict adherence to the spirit promoted by the institution for the dissemination of study, teaching, and outreach to the public in the area of human rights, carried out in the month of September, 2006, 76 training activities addressed to students at the basic and superior level, persons in positions of vulnerability, among them women, interned persons, young people, as well as public servants of the armed forces, public security, procurement of justice, penitentiary personnel, personnel of public health institutions, organisms of human rights, non-governmental organizations, among others.

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