

NEWS LETTER

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THE GOVERNMENT OF THE FEDERAL DISTRICT REJECTS RECOMMENDATION 20/2009, ISSUED BY THE CNDH ON THE ISSUE OF THE EXPROPRIATION OF THE PROPERTY WHERE THE NIGHT CLUB NEW'S DIVINE USED TO OPERATE

The National Commission of Human Rights believes that the explanations and arguments offered by the Government of the Federal District for the rejection of Recommendation 20/2009, based on the expropriation of the property where the night club New's Divine and a beauty parlor used to operate, are insufficient and unfounded. The decree upon which the Government of the Federal District based the aforementioned expropriation is not supported by any current laws, in addition to the fact that the victims who filed the complaint were not properly notified of the expropriation procedure or of its consequent resolution.

At the same time, the National Commission believes that by rejecting the investigation required by Recommendation 20/2009, the Government of the Federal District has left the door wide open for the repetition of similar acts of abuse of power. The attitude displayed by public officials in this case has obstructed, limited and affected the full exercise of a Democratic State in our country.

The Holder of the Legal Advisory Office of the Government of the Federal District was responsible for the rejection of the Recommendation issued by the CNDH, despite the fact that the intended recipient of the Recommendation issued on March 20th 2009 was the Head of the Institution. This action is contrary to Article 46 of the Law of the National Commission of Human Rights, which, among other things, establishes that, "When the Recommendation has been received by the intended authority or public official, said person must confirm acceptance of the Recommendation within the following 15 working days, after notification."

It should be mentioned that the public official in charge of the rejection was the same person who failed to reply several requests for information formulated by the CNDH with regards to the expropriation of the property. As stated in Article 38 of the Law of the CNDH, failure to reply on the part of the aforesaid public official helps to confirm that the facts included within the Recommendation are true indeed.

The aforementioned authority's reply was limited to indicate that the Human Rights Commission of the Federal District had already initiated a complaint and, since the case involved local authorities, the National Commission was not allowed to request any information from the Government of the Federal District. However, the jurisdictional competence of the National Commission derived from the fact that the case involved public officials of the Federation, in addition to those attached to the Federal District Government; a fact clearly stated on the complaint filed by Mr. Alberto Amaya Arellanes. Therefore, Article 3, Second Paragraph of the Law of the CNDH must be applied in this case.

Although the Expropriation Decree is based on constitutional and legal dispositions, legal requirements such as due motive are missing, since authorities attached to the Government of the Federal District only reproduced legal precepts, thus failing to provide analytical or circumstantial evidence, as well as: special motives; particular reasons; antecedents; or immediate, and concrete proof of the facts. All of the above would serve as the basis for the application of said precepts but instead, the victims were left in a complete state of legal insecurity and uncertainty.

The National Commission was also able to establish that the performance of several police agents attached to the Secretary of Public Safety of the Federal District was completely unlawful. The above is due to the fact that they stopped the victims from entering the

beauty parlor to conduct their jobs, constituting actions that clearly affected the victims means for subsistence, not to mention that said action was a direct contradiction of the orders originally issued to the aforementioned police officers.

The National Commission has not overlooked the fact that Articles 3 and 4 of the Expropriation Decree establish that a declaration of expropriation must be published and all parties involved in the procedure must be properly notified. Failure to provide official recognition of the fact that they had no previous knowledge of the victims' addresses, in addition to failure to provide assurance that a second publication of the Agreement would cover the legal obligation of providing the victims with personal notification, constitute serious omissions on the part of the capital city's authorities.

Among other matters related to cause of public utility, the Official Statement found in the aforementioned Expropriation Decree establishes that the Holder of the Government of the Federal District textually explained that the expropriated property was being used to corrupt minors through the sale of alcoholic beverages. However, the Holder of the Legal Advisory and Services and the Chief Clerk to the Government of the Federal District informed the local Human Rights Commission – as part of the investigation of the facts – that the authorities in charge of all data and information on the Official Statement were the Attorney General's Office and the Secretary of Public Safety. Therefore, the CNDH could not be entirely certain on whether said information was included within all supporting documentation. Also, no evidence to establish the existence of any firm resolution was provided by any judicial or administrative authority, which could help establish a cause of public utility by the time that the Decree was published.

In order to establish cause of public utility as the legal foundation for the aforementioned Expropriation Decree, Fraction IV of Article I of the Expropriation Law was invoked. Although in accordance to the analysis conducted by the CNDH, said Article and its pertaining Fraction is not applicable in this case, since it refers to, "the conservation of places of panoramic beauty, antiquities and artistic objects, archeological and historic buildings and monuments, as well as other objects considered as notable features of our national culture."

On the other hand, the Youth Institute of the Federal District must have presented proof that acquisition of the expropriated property, for the construction of a Unit for the Attention of Youth, had already been included as part of the institute's annual plans and working programs since the beginning of 2008. Plans and projects properly approved by the pertaining authorities had already been laid out and the facilities for the attention of youths had already been considered as part of the budget approved by the Legislative Assembly of the Federal District. None of the provisions demanded by law, and necessary for the use of public resources, were fulfilled in this case.

RECOMMENDATIONS

The following is a recap of recommendations issued by the CNDH during the month of April. A complete version can be found on the Commission's official website.

Recommendation 23/2009

April 3rd 2009

Case: Of Mr. Yavhé Gaona Ramírez

Responsible Authority: Federal Secretary of Public Safety

On September 10th 2008, the National Commission received a complaint filed by Mr. Yavhé Gaona Ramírez, an inmate of the Federal Center of Psycho-Social Rehabilitation located in Ciudad Ayala, Morelos at the time. Among other aspects, the complaint ascertained that the aforementioned institution prevented the victim from keeping his correspondence during the time spent at the facility.

Following the initial complain, on October 6th 2008, the Commission received another document filed by the victim, stating that on September 24th, he had received a letter, but refused to return it after a social worker of the facility assured him that he would need to obtain the pertaining authorization. The inmate said that, since he refused to return it, the letter had been taken from him by force and that he was later placed in confinement by members of the facility's security personnel.

The complaint file was ratified by the National Commission under number CNDH/3/2008/4406/Q, as analysis of evidence included within the file helped establish violations to the human rights of legality, hearing and presumption of innocence, committed against Mr. Yavhé Gaona Ramírez. Said violations were the result of the implementation of security measures consisting of isolation of the victim at the aforementioned Center's facilities twice, on June 19th and September 25th 2008. The aforementioned measures are not regulated by any current applicable laws, since no rulebook or manual indicating the correct measures has been published or distributed by the institution in the Official Journal of the Federation. Additionally, members of the Inter-disciplinary Technical Council imposed the aforementioned preventive measures with no support from any existing procedures previously conducted, which could have helped determine the victim's responsibility, according to behavior previously observed in him.

Based on the facts mentioned above, on March 3rd 2009, the National Commission issued recommendation, addressed to the Holder of the Federal Secretary of Public Safety to insure that any and all actions deemed necessary for the immediate release and publication of the Rulebook of the Federal Psycho-Social Rehabilitation Center in Ciudad Ayala, Morelos are conducted. The Rulebook must be applied for the regulation of the Center's organization, operation and administration, taking into consideration the observations contained in said pronouncement, and in full compliance with Article 12 of the Federal Law of Institutional Public Administration. Any

and all necessary procedure manuals must be released and published immediately, so that the Center may function properly, in accordance to all considerations contained within the Recommendation and as established by Article 19 of the Federal Law of Institutional Public Administration. In addition, the Internal Control Body of the Rehabilitation Center must initiate an administrative investigation process against the members of the Inter-disciplinary Technical Council responsible for imposing the aforementioned preventive measures on Mr. Yavhé Gaona Ramírez, on June 19th and September 25th 2008.

Recommendation 24/2009

April 3rd 2009

Case: Of Mr. Francisco Maldonado Nieto

Responsible Authority: The Assembly of the LX Legislature of the Honorable Congress of the State of Tamaulipas and the Honorable Constitutional Office of Altamira, in the State of Tamaulipas

On September 17th 2007, the National Commission received a complaint filed by Mr. Francisco Maldonado Nieto, reporting alleged violations against human rights. The complaint was based on the fact that the corporation Geo Tampico S.A. de C.V. presented the victim with a residence purchased through credit authorized and provided by the National Institute for the Funding of Housing for Workers (Spanish initials – INFONAVIT). However, the residence presented humidity problems that were promptly reported to the Geo Tampico, on the same day that the victim was presented with the house. In addition, the victim claimed that authorization was provided for the construction of his newly purchased residence as part of a housing development located in the outskirts of a lake. For this reason, he went before the Municipal Office of Altamira, Tamaulipas, where personnel attached to the municipality offered to solve the problem, though they failed to carry out any actions conducive to such effect. On the other hand, officials attached to INFONAVIT indicated that this particular situation was not their problem, although they did accept the responsibilities for damages to the residence's lower level.

After establishing violations to the rights of housing, legality and legal safety, the National Commission formulated a conciliation proposal and presented it before the National Institute for the Funding of Housing for Workers, as well as the Municipal Office of Altamira, Tamaulipas. INFONAVIT accepted the proposal, although the aforementioned municipality decided not to issue to any pronouncement whatsoever.

Based on all evidence gathered, the National Commission estimated that the performance of personnel attached to the aforementioned municipality failed to comply with the law, since no provisions were taken into consideration in order to prevent any consequences and effects that construction on the particular site could have on human and social development. Legal and technical supervision on behalf of the executive project were in evidence, thus affecting the protection of the right to housing for the inhabitants of the lower zones in said municipality.

Likewise, documentation provided by municipal authorities demonstrates that construction of the Villas de Altamira Housing Development was indeed authorized, despite the fact that the proper studies on the location of the lower zone and the topographic characteristics of the ground on the construction site were never conducted. Said omissions failed to take into consideration potential violations to the inhabitant's rights of housing due to natural phenomena, such as rain, which creates a natural slope as it falls; a situation that already occurred in the particular case that motivated this complaint. In addition, by failing to assure that all pertaining laws with regards to the authorization of construction permits were properly fulfilled, the municipal authorities of Altamira failed to fulfill their obligations. Also, local authorities failed to overlook and properly control the use of the ground within the municipality's territorial jurisdiction, in accordance to municipal attributions as established by the Municipal Code for the State of Tamaulipas. All of the above has eventually forced the victim and other inhabitants of the Villas de Altamira housing development to be faced with insecurity and uncertainty on a yearly basis.

The National Commission believes that members of the Altamira Municipal Office's staff involved in the facts stated by the victim failed to comply with: Article 4, Fifth Paragraph of the Political Constitution of the Mexican United States; Article 11 of the International Pact of Economic, Social and Cultural Rights; Article 25.1 of the Universal Declaration of Human Rights; Article XI of the American Declaration of the Rights of Man, and Article 8 of the Declaration on the Right to Development. Generally speaking, all of the aforementioned articles recognize that all persons have the right to rightful and dignified housing. The articles also state that, in order to reach that objective, any and all necessary instruments and support shall be provided by the Law. Therefore, violations to the victim's rights of legality and legal safety have also been established.

As a consequence, the National Commission issued Recommendation 24/2009 on April 1st 2009, addressed to the Holder of the Assembly of the LX Legislature of the Honorable Congress of the State of Tamaulipas and to the Members of the Honorable Constitutional Municipal Office of Altamira, also in Tamaulipas. The Recommendation requests for any and all responsibilities attributable to the Holder of the Altamira, Tamaulipas Municipal Office to be determined. A treaty must be negotiated with the construction company responsible for the construction of the Villas de Altamira housing development so that the victim is provided with a better located residence house in exchange for the residence provided to him in such an inadequate location. Also, the Municipal Office's Internal Control Body must initiate an investigation against all of the personnel involved in the case and oversee all of the work or negotiations that are to be conducted until a resolution is reached. Additionally, the agent attached to the Public Attorney's Office

must initiate an investigation against the construction company and all of the authorities involved in the facts, based on possible crimes committed during the construction of the "Villas de Altamira" housing development.

Recommendation 25/2009

April 17th 2009

Case: The case of passengers in international flights arriving at the México City "Benito Juárez" International Airport

Responsible Authority: Secretary of Agriculture, Ranching, Rural Development, Fishing and Food Supply

On June 20th 2008, the National Commission became aware of a series of alleged irregularities committed by personnel of the Secretary of Agriculture, Ranching, Rural Development, Fishing and Food Supply (Spanish initials – SAGARPA). Personnel attached to the aforementioned institution stationed on Terminal Two of the México City "Benito Juárez" International Airport, retained several products brought by passengers arriving from international flights, without any explanation on the legal basis or motive for said actions. Victims were not provided with copy of the pertaining retention act nor were they properly informed of the final destination of their products. In addition, victims were not properly informed on any possible limits on entry of their products into national territory nor were they informed on the requirements they would need to fill in order to liberate their belongings.

Complaint 984/2002 provided the National Commission with background on a similar case, which was based on several violations to human rights committed by personnel attached to SAGARPA in the facilities of the México City "Benito Juárez" International Airport. According to the aforementioned complaint, SAGARPA had established a surveillance post where all passengers arriving from abroad would have their belongings checked, while all persons carrying organic products among their belongings would be detained.

In light of the facts described above, in addition to several conversations sustained with personnel attached to SAGARPA on July 10th 2002, a conciliation proposal was formulated and addressed to the former holder of the institution. The proposal sought to establish the implementation of any and all preventive measures necessary to avoid actions as the ones that led to the conciliation. The conciliation proposal was accepted and filed under the number 7656/2002 on July 16th 2002, and the pertaining authority committed fully into complying with and fulfilling each and every single one of the points included within document; a circumstance established during the follow up and conciliation stage.

Based on all of the facts mentioned above, personnel attached to the National Commission of Human Rights conducted several proceedings before the Office of the National Agricultural and Food Supply Sanitary Health and Quality Service (Spanish initials – SENASICA) attached to SAGARPA, as well as before authorities of the México City "Benito Juárez" International Airport.

Legal-logical analysis of the evidence contained within the complaint file allowed the National Commission to establish several violations to the human rights of legality, legal safety and due process of passengers arriving from abroad at the México City "Benito Juárez" International Airport, motivated by improper performance of public functions, attributable to personnel in charge of zoo-phytosanitary inspection of the Office of Health and Farming Inspection of the SENASICA in charge of providing services at the airport; all bodies attached to SAGARPA, due to the following considerations:

Motivated by the conciliation formulated on July 10th 2002 and included within file 984/2002, the former head of SAGARPA was asked to "set up signs in check up points, so that passengers may be thoroughly informed on the proper check up, verification or destruction procedure of organic products in their possession to be conducted by public officials of the Secretary. Memorandums must be distributed in order to inform the personnel in charge of check up points that their performance shall be subject to requirements observed in Article 14, Second Paragraph, and Article 16 First Paragraph, of the Political Constitution of the Mexican United States. Any and all pertaining measures should be taken in order to provide persons departing from or arriving into the country from abroad with the necessary information, so that requirements demanded by the Law with regards to the entry of species, animals, vegetables and all products and sub-products derived from them, or with regards to any legal restrictions forbidding entrance of such objects into the country."

The conciliation proposal was accepted through file 7656/2002 on July 16th 2002, and the addressed authority committed fully to complying with and fulfilling each and every one of the points included within the proposal.

However, the facts that led to the initiation of file CNDH/1/2008/5239/Q demonstrate that actions similar to the ones that led to the formulation of file 984/2002 took place once again, since zoo-phytosanitary security personnel attached to the Office of Agricultural Health Inspection (Spanish initials – OISA) of the SENASICA, both bodies attached to SAGARPA, found several different products of organic origin during an inspection procedure conducted on the belongings of passengers arriving from abroad. Passengers were told that their products could not enter into the country, because they may contain different plagues, thus representing a phytosanitary risk. At the same time, passengers were presented with a flyer that provided them clear information with regards to the proper procedures and final destination for their merchandise.

All of the above points to a clear omission, which translates into a violation of the human rights to legality, legal safety and due process. Said violations derived from failure to comply with the essential formalities of procedure, as established by Article 14, Second Paragraph, of the Political Constitution of the Mexican United States, which implies that, authorities may conduct acts of privation

granted by law, as long as the guarantee to a proper audience is respected for the person that may be deprived of any of their properties or rights; a circumstance that in this case did not occur, since the passengers arriving from abroad were left in a total state of uncertainty, as their products were retained before they could make their cases heard.

As mentioned above, the situation clearly indicates failure to comply with adequate regulation that may help determine proper check up procedures on the belongings of passengers arriving from abroad at airports in the Mexican Republic. Said procedures must assure that the rights to legality and legal safety established by our Constitution are fully respected.

Likewise, it has been established that, in order to simplify administrative procedure, passengers arriving from abroad are provided with informational material in the form of customs declaration formats that must be filled before they arrive at the customs area.

The above goes against legality, legal safety and due process as established by Article 14, Second Paragraph, and Article 16, First Paragraph, of the Political Constitution, since all authorities must be granted with the power to conduct any acts of privation or annoyance. Therefore, said authorities cannot avoid their responsibilities through duties attributable to other public bodies; a situation that creates a defenseless state, since the parties involved are unable to properly identify the authority responsible for the violation in question, as well as the proper legal mechanisms that will aid them to prevent such actions.

It should be noted that the National Commission is in no way pretending to oppose that personnel in charge of zoo-phytosanitary inspections of the Office of Farming Health of the SENASICA attached to the SEGARPA, may conduct their duties of revision, retention and destruction of products of vegetal or animal origins that may enter Mexican soil. However, said authorities must make certain that no violations of the human rights to legality, legal safety and due process, as established by the Mexican Constitution, are committed against passengers arriving from abroad at the México City "Benito Juárez" International Airport. Therefore and in order to avoid annoyance and confusion among interested parties, the National Commission is in favor of assuring that all aforementioned procedures are conducted in adequate, clear and precise manner.

Following this line of thought, it is evident that, in this case, inspection procedures resulted in violations to the rights of legality, legal safety and due process; rights observed in international instruments celebrated by the Federal Executive and ratified by the Senate of the Republic, in accordance to Article 133 of the Political Constitution of the Mexican United States, in addition to Article 17.2 of the International Covenant of Civil and Political Rights and Article 8.1 of the American Convention on Human Rights.

Likewise, violations to Article 1.1 of the American Convention on Human Rights were committed in this case, since, the contents of said article are based on the interpretation of the Inter-American Court of Human Rights, which states that any and all types of public power that result in violations to human rights constitutes illegal actions. Therefore, any time that a public body or official attached to the State, independently from the State's hierarchy, unlawfully causes injury to one of the aforementioned rights or, if their actions fail to comply with their proper duties, said actions constitute violations to human rights.

As a result, the CNDH issued Recommendation 25/2009, addressed to the Holder of the Secretary of Agriculture, Ranching, Rural Development, Fishing and Food Supply (Spanish initials – SAGARPA), recommending the following:

FIRST. Instructions must be issued to the National Agricultural and Food Supply Sanitary Health and Quality Service (Spanish initials – SENASICA) so that any and all revision procedures conducted by zoo-phytosanitary inspections officials are carried out in full compliance with the rights to legality, legal safety and due process for all persons, as established by Article 14, Second Paragraph, and Article 16, First Paragraph, of the Political Constitution of the Mexican United States.

SECOND. The personnel of the Office of Agricultural Health Inspection (Spanish initials – OISA), attached to the National Agricultural and Food Supply Sanitary Health and Quality Service (Spanish initials – SENASICA), must be properly instructed in order to produce a Revisions Procedure Manual for Passengers arriving from abroad in international flights at all airports in the Mexican Republic. The National Commission must be provided with the proper documentation to confirm that the procedure is being implemented.

THIRD. Instructions must be issued to whom it may concern so that procedure manuals, in addition to advertising and other kinds of material distributed by SAGARPA, includes any and all requirements demanded by the Law for General Taxation of Imports and Exports, for entry of animals, vegetables and their respective products into the country, as well as the consequences in case said requirements are not fulfilled. The National Commission must be provided with the proper documentation to confirm that the procedure is being implemented.

FOURTH. Signs must be placed at all check up points attached to SAGARPA in order to provide passengers with adequate information on the correct personnel in charge of complaints related to the performance of public officials responsible for revision, verification or destruction of any and all organic products that passengers may carry with them. Additional signs providing passengers with the proper assigned areas and a telephone number for suggestions or inconformities must be placed. The National Commission must be provided with the proper documentation to confirm that the procedure is being implemented.

FIFTH. Any and all pertaining measures must be taken so that passengers traveling abroad or arriving at the country are kept properly informed on the requirements demanded by the law with regards to all species, animals, vegetables and their respective products or sub-products that are allowed into the country or, be clearly informed of the legal restrictions applicable to the entry of said objects into our national soil.

SIXTH. The Internal Control Body, already familiar with the administrative procedure underway against zoo-phytosanitary inspection personnel responsible for this case, must be properly informed of all considerations contained within the Observations Chapter of the Recommendation. Likewise, the National Commission must be properly informed of progress until a final resolution, in accordance to the law, has been reached.

Recommendation 26/2009

April 17th 2009

Case: Of minors M1 and M2

Responsible Authority: Secretary of Communications and Transportation

The National Commission of Human Rights issued Recommendation 26/2009, addressed to the Secretary of Communications and Transportation (Spanish initials – SCT), based on the case of two minors, whose names are to remain anonymous, who were subjected to acts discrimination. Said violations were committed when personnel attached to a commercial airline prevented the two victims from boarding a commercial flight; a situation derived from the fact that the two minors suffer from a hereditary, although not contagious, skin disease. The aforementioned acts of discrimination were committed with the consent of personnel attached to the General Management Office of Civil Aeronautics of the SCT, assigned to the International Airport of Monterrey, Nuevo León.

On October 3rd 2008, the National Commission received a complaint filed by the mother of the two minors, who stated that on September 27th, her husband, her two sons and her were waiting to board a commercial flight to México City, with a scale at Monterrey, at the International Airport of Las Vegas, Nevada, United States. Both her sons suffer from a non-contagious skin disease known as bubbling dystrophic epidermolysis.

An employee of the airline tried to stop the victims from boarding the plane, claiming that their condition could be contagious. Hence, their father was forced to sign a letter of responsibility, assuming any consequences that may derive from transporting his two children on board.

By the time that the flight had arrived at the Monterrey airport, a stewardess prevented the family from boarding the airplane, until medical revision of the two minors was conducted. The father of the victims requested to talk with the airplane's captain, which prompted the stewardess to ask for the intervention of agents attached to the Preventive Federal Police, claiming that she found the situation threatening.

Signaling the minors publicly, having the minors health condition evaluated by a paramedic and demanding the intervention of public safety forces constitute actions against Article 53 of the Law of Airports, which establishes that all airport facilities are at the disposition of their users under permanent, uniform, regular and non-discriminatory conditions.

Based on the legal-logical analysis of the evidence found in this case, the CNDH has been able to establish violations of the rights to dignified treatment, non-discrimination and legality, as established by Article 1, Third Paragraph, Article 4, Sixth Paragraph, and Article 16th, First Paragraph, of the Political Constitution of the Mexican United States. The aforementioned violations derived from acts of discrimination committed against the two minors by personnel of the commercial airline, in addition to the omission committed by the General Management Office of Civil Aeronautics attached to the Secretary of Communications and Transportation.

The CNDH believes that the omission committed by the Aeronautics Commander assigned to the Monterrey airport is evident, based on the fact that the aforementioned public official was aware of the actions committed against the two minors. This fact was confirmed through information provided to the National Commission by the Aeronautics Commander himself, which clearly indicates that, by failing to provide the case with the proper attention that it demanded, he also failed to comply with his duties, in accordance to attributions granted to public officials of his rank. All of the above constitutes a violation to Article 7, Fractions I and VI, of the Law of Civil Aviation, and Article 169, Fraction IX, of the Rulebook of the Law of Airports, which demand that aeronautic commanders are under the obligation of overseeing and verifying that concessionaires, official agents, airplane operators, and areal service providers comply with all applicable laws and, if necessary, order the implementation of measures conducive to the investigation of any and all incidents that involve airplanes, ground vehicles, or persons found within the limits of airports pertaining to their respective jurisdiction.

The omission committed in this case constitutes a violation of the rights to legality, honesty, loyalty, impartiality and efficiency; rights that should have been observed by the authority in question as part of the performance of his duties, position and commission. Failure to comply with all of the above constitutes a violation to obligations established in Article 8, Fractions I, XVII, XVIII and XXIV, of the Federal Law of Administrative Responsibilities for Public Officials.

Through the Recommendation, the CNDH requests for the Holder of the Secretary of Communications and Transportation to repair the damages that the discriminatory actions committed against them caused to the two victims and their parents. The Internal Control Body of the SCT must be properly instructed in order to initiate an investigation against the responsible aeronautic commander for the attitude displayed in this case. An inspection of the commercial airline's quality and service conditions must be conducted and, should any irregularities be detected, any and all corrective necessary measures must be implemented in accordance to the law.

The Recommendation also requests for the adoption of administrative measures to assure that similar actions may never again take place. All users of airport services in the country must be properly informed of the rights at their disposal, particularly to prevent that persons are subjected to revisions or acts of discrimination. Likewise, airport users must be properly informed of the limits of powers granted to airport authorities. Lines must be established for the regulation of procedures conducted by personnel attached to commercial airlines and also in order to establish their pertaining responsibilities. The personnel attached to the General Management of Civil Aeronautics must be properly trained in matters of observance and respect of human rights.

Recommendation 27/2009

April 27th 2009

Case: Of the New's Divine contestation appeal

Responsible Authority: The Government of the Federal District, the Holder of the Human Rights Commission of the Federal District

The National Commission of Human Rights issued Recommendation 27/2009, addressed to the Head of the Government of the Federal District, Marcelo Ebrard Casaubón, and to the Holder of the Human Rights Commission of the Federal District (Spanish initials – CDHDF), Emilio Álvarez Icaza Longoria, based on failure to comply with commitments acquired by authorities of the capital city as established in the Recommendation issued by the local human rights commission, on the facts that took place in the night club New's Divine, as well as for omissions and insufficiencies found within the aforementioned recommended resolution.

The performance of the CNDH is based on the following: Article 102, Incise B, of the Political Constitution of the Mexican United States; Article 1, Article 3, Last Paragraph, Article 6, Fractions IV and V, Article 15, Fraction VII, Article 24, Fraction IV, Articles 55, 61, 62, 63, 64, 65 and 66, Incises b) and d), of the Law of the National Commission of Human Rights, and Article 159, Fraction II and Articles 160, 162, 167, 168 and 170, of the Commission's Internal Rulebook.

The CNDH revised the performance of the local human rights institution as a consequence of the ratification of seven contestation appeals filed by victims and direct relatives of victims of the police operation that occurred at the site of the New's Divine night club. Several insufficiencies related to the Recommendation issued by the local institution on July 2008 were found, all related to the inquiries and subsequent determination of the violations committed against the fundamental rights of the victims in the New's Divine case.

On the one hand, the Recommendation issued by the CNDH establishes that the capital city's government has failed to fulfill its obligation to finance several different administrative procedures pertaining to their responsibilities. On the other hand, no initial investigations have been conducted in some cases of potential penal implications and in other cases, investigations are still on substantiation phase and have yet to be determined, despite the fact that said investigations were initiated 10 months ago.

The actions of the Office of the Holder of the Government of the Federal District have impeded the proper restitution of the victims fundamental rights of the victims and their direct families; a situation that also represents an act of irregular procuration of justice through the different procedures related to the New's Divine case; procedures that clearly favor impunity for the responsible parties. In cases where grave violations of human rights occur – such as the ones that took place in the New's Divine case – in order to assure full restitution of all violated rights, it becomes essential that investigations are conducted in swift thorough and impartial manner. Also, the victims must be provided with effective access and neither situation has taken place in this case.

On the other hand, through the Recommendation, the CNDH observed with grave concern that public officials attached to the CDHDF committed several omissions in the investigation; omissions which have prevented the victims in the New's Divine case from being provided with the protection that Article 102, Incise B, of the Mexican Constitution demands.

Based on Constitutional Articles 14, Second Paragraph, and 16, First Paragraph, the National Commission has been able to establish violations against the victims' fundamental rights of legality and legal justice, all attributable to the Office of the Holder of the Government of the Federal District, as the consequence of failure to comply with the commitments acquired when Recommendation 11/2008, issued by the local human rights commission, was accepted.

With regards to insufficiencies found in the Recommendation issued by the CDHDF, the National Commission has established that the investigation on the cases of youths who were transferred to the headquarters of the Secretary of Public Safety of the Federal District and agencies attached to the Public Attorney's Office – where they all remained in detainment. All detainees were marked with ink markers, photographed, and females were stripped in the presence of males, allegedly in order to verify their physical conditions. The local commission ratified the respective file, even though to this day, the file has yet to reach a legal resolution or determination.

The testimony provided by several detainees with regards to the way they were treated helped establish that they were not actually in detention, but rather brought before the pertaining authority as witnesses. With regards to these facts, the National Commission believes that the local commission had evidently failed to gather any coincidental testimonies whatsoever, concerning violations committed against the victims by public officials. Therefore, it is impossible to sustain that, whereas the means of conviction were available to officials in charge of the case, not only did they fail to conduct a full investigation of the facts, but they conducted a divided investigation – an action not allowed by current laws –. All of these actions are a direct contradiction to the legal principles of swiftness and economic process, both of which should have been implemented in this case.

The local human rights commission committed a serious omission by failing to include the information needed to identify the public officials responsible for the facts. Yet, another serious omission was committed when the local commission failed to provide the General Treasury Inspector's, and the Attorney General's Offices with proper information on the potential crimes and irregular behavior that said public officials may have committed. In addition, the points included within the Recommendation made no reference to the initiation of a procedure to divide responsibilities. However, personnel attached to the local human rights commission failed to provide proper counseling to the victims' families with regards to the exhumation of the bodies, so that a new dictamination on the causes that led to the death of their direct relatives could be obtained.

Concerning the irregularities found on several ministerial activities conducted by the Attorney's Office of the Gustavo A. Madero District and by the 50th Agency of the Public Attorney's Office, the investigation has yet to be concluded and no pertaining pronouncement been issued either, thus preventing any progress to reconstitute all of the victims' violated rights. Ten months after the pertaining file was initiated, the file remains undetermined, which clearly indicates that the Attorney General's Office of the Federal District has not taken the pertaining investigation to its fullest limits. Also, omissions have been found in the performance of authorities, since they have failed to implement measures that seek to safeguard the rights of the victims. The rights to due process and legal safety of the persons subjected to ministerial inquiries have been violated and the proper performance of said authorities was not observed, due to lack of coordination, uniformity and specialization of ministerial personnel. Measures to guarantee the rights of victimized minors were not implemented. Due process and the rights of involved parties were not respected and pronouncements pertaining to Recommendation 11/2008 were not issued, thus presenting elements that seriously undermine access to justice and represent grave legal attributions. With regards to failure to comply with the Recommendation issued by the local commission, integration of inquiries has not been included nor have they been resolved. The administrative investigation against personnel attached to the Gustavo A. Madero District Office involved in the case is still ongoing and has yet to reach a resolution. No investigation or disciplinary procedure whatsoever against the former holders of the Secretary of Public Safety and the Attorney General's Office of the Federal District was conducted, despite the fact that the testimony offered by several of the victims indicated that said authorities should have been placed under detention, not to mention that they were responsible for allowing the operation in the night club's facilities to continue, despite its obvious failure.

The Recommendation issued by the CNDH asks for the Holder of the Human Rights Commission of the Federal District to conduct an integral and efficient evaluation of the facts currently substantiated, in addition to the contents of the file. In addition, all public officials responsible for the violation of the victims' human rights must be fully identified. The division of the investigation based on the complaints must be avoided in order to guarantee access to justice for the victims of violations to fundamental rights, in full compliance with ordinances that regulate the procedures of the Human Rights Commission of the Federal District. The Treasury Inspector's and the Attorney General's Offices of the Federal District must initiate a procedure on the facts that occurred in the night club New's Divine on June 20th 2008, so that any and all administrative and penal responsibilities attributable to the public officials responsible for the authorization, planning and execution of the operation is conducted, including precise data that may help locate, identify and determine any and all involvements on the aforementioned human rights violations.

The Office of the Holder of the Government of the Federal District is requested to assure that all dependencies, de-centralized bodies and semi-official entities involved in the facts fulfill any and all preventive measures that institutions for the protection of human rights may demand from them. The Attorney General's Office of the Federal District must issue a determination of the pertaining initial investigations, as soon as possible. The Holder of the Secretary of Public Safety of the Federal District must be properly instructed in order to determine all ongoing investigation procedures and administrative responsibilities. The Treasury Inspector's Office of the Federal District must conduct an investigation of the potential involvement of local public officials in facts already considered grave on their own. Finally, all investigation procedures and responsibilities to be conducted and issued by the Treasury Inspector's Office, as well as the internal Treasury Inspector's Offices of the different dependencies, must be conducted in swift and expeditious manner.

Recommendation 28/2009

April 28th 2009

Case: Of Mr. Miguel Ángel González González

Responsible Authority: National Secretary of Defense

On July 8th 2008, the National Commission received a complaint filed by the Holder of the Secretary of Agreements of the Sixth District Court of the State of Chihuahua located in Ciudad Juárez. The complaint stated that, on June 27th 2008, personnel attached to the Mexican Armed Forces entered the home of Mr. Miguel Ángel González González in the early hours of the morning. The victim was then transferred to the facilities of the military garrison of Ciudad Juárez, where he was beaten repeatedly and subjected to

electroshock, before finally being brought before the Agent of the Public Attorney's Office of the Federation. as initial investigation AP/PGR/CHIH/JUA/829/2008-VII was opened The victim remained in detention until 15:30 hours on the same day, when he finally presented his statement and certification for all injuries sustained was provided.

Based on the aforementioned facts, the National Commission initiated complaint file number CNDH/2/2008/3501/Q. Legal-logical analysis conducted on all evidence gathered led to the conclusion that violations of the rights to personal integrity, legality, legal safety and personal freedom were committed in the form of residential inviolability, arbitrary detention, excessive use of force during the detention, torture, illegal retention and delaying presentation of the detainee before the pertaining authorities; all attributable to public officials attached to the National Secretary of Defense.

The National Commission has established that the performance of military personnel attached to the 1st Mechanized Regiment in support of the Chihuahua Joint Operation responsible for the detention of the victim, did not comply with the law, for the detention and subsequent transferral to the military facilities located in Ciudad Juárez were not properly conducted. Once at the aforementioned military facilities, the victim was subjected to interrogation and remained in detention until 15:30 hours on June 27th 2008. At that time, the victim was finally placed under the charge of the social representative of the Federation, thus failing to comply with Article 16, Paragraph Four of the Political Constitution of the Mexican United States; a current law at the time of the facts, which establishes that, "any person may place the suspect of a crime on detention, at the time or immediately after a crime has been committed. Next, the suspect must be brought before the closest pertaining authority without further delay. Likewise, the authority in question must immediately present the suspect before the Public Attorney."

Military personnel failed to comply with the mandate established by the aforementioned Constitutional Article, due to the fact that detention of the victim occurred at 04:00 hours, on June 27th 2008. The aforementioned military personnel also failed to present a warrant, thus transgressing the inviolability of the victim's residence. Afterwards, the victim was transferred to the facilities of the 20th Military Zone in Ciudad Juárez, where he was forced to remain for a period of more than 11 hours. However, description of the facts provided by the military personnel in charge of the apprehension in the novelties chapter states the contrary, indicating that the victim was immediately brought before the agent of the Public Attorney's Office; a statement that is completely unsustainable, for the report filed by public officials attached to the National Secretary of Defense indicates that the actual detention took place at 04:00 hours on June 27th 2008 and that the medical certificate was released at 11:00 hours on the same day, in the facilities of Military Camp 5-C, in Ciudad Juárez, Chihuahua. Said medical report was based on the results of the physical examination that Mr. Miguel Ángel González González was subjected to and, since the initial investigation was not opened until 15:30 hours, evidence clearly establishes that presentation of the detainee before the pertaining authority was deliberately and improperly delayed for more than 11 hours; the exact time that transpired between the detention and presentation of the victim before the pertaining authority. Therefore, it has been established that the improper manner in which the detention of the victim was conducted constitutes an illegal privation of liberty, attributable to the performance of personnel attached to the Mexican Armed Forces in charge of the apprehension, which in turn, transaltes into the violation of the victim's fundamental rights to legality and legal safety.

Likewise, there is also enough evidence to establish violations of Mr. Miguel Ángel González González's rights to physical integrity. The above is based on the fact that, while under detention, Mr. González González suffered attempts against personal integrity that resulted in injuries attributable to the use of excessive force and typical actions of torture. The latter is based on the fact that, immediately after arriving at the military facilities and in an effort to force the victim to recognize the charges presented against him, Mr. González González was severely beaten. However, the information found within the medical certificate issued by personnel attached to the aforementioned military garrison only mentions that the victim presented minor injuries; a complete contradiction of the evidence gathered and established by the National Commission, through ministerial and judicial certification of the injuries, as well as that of the dictamination issued by personnel attached to the CNDH.

Following this line of thought, the National Commission estimates that the victim was subjected to torture maneuvers, which could very well be in accordance with some of the more typical hypotheses established by Article 3 of the Federal Law for the Prevention and Sanction of Torture; a situation that must be properly investigated by the pertaining ministerial authority, so that no impunity is allowed for this case.

The National Commission believes that the personnel attached to the Mexican Armed Forces who participated in the aggression, detention and retention of the victim, violated the following Articles: 14, Second Paragraph; 16, First Paragraph; 9 and 10; 19, Fourth Paragraph; 20, Incise A, Fraction II; 21, Ninth Paragraph, and 22, First Paragraph of the Mexican Constitution, in addition to Articles: 1, 2, 6, Second Paragraph, 8, 9 and 12 of the Inter-American Convention for the Prevention and Sanction of Torture, and Articles 2, 3 and 5, of the Code of Conduct for Public Officials Responsible for Reinforcing the Law.

In addition, based on their functions as public officials in charge of reinforcing the law, all of the responsible parties violated rights as established by international treaties, such as the International Covenant of Civil and Political Rights and the American Convention on Human Rights, which generally indicate that all persons are entitled to the rights to security and personal integrity.

As a consequence, the National Commission issued Recommendation 28/2009 on April 28th 2008, addressed to the Holder of the National Secretary of Defense, fundamentally requesting for the initiation of any and all procedures deemed necessary, in order to

repair any and all physical, psychological and medical damage suffered by Mr. Miguel Ángel González González, through all the psychological and medical support deemed necessary to assure full re-establishment of the victim's physical and psychological condition. In other words, the victim's condition must be as it was before this violation of his human rights was committed. Also, the pertaining administrative investigation procedure must be initiated against the military personnel who intervened in the facts included within the Recommendation.

Likewise, it has been recommended for the Attorney General's Office for Military Justice to conduct the pertaining initial investigation, taking into consideration all details included within the Observations Chapter of the Recommendation. Additionally, any and all necessary measures must be taken in order to prevent that actions similar to the ones described in the recommendation occur ever again. Instructions must be issued in order to assure that personnel attached to the 1st Mechanized Regiment in support of the Chihuahua Joint Operation of the Mexican Armed Forces, including all military medical personnel, receive proper training so that they may conduct their duties in full compliance with the law and respect for human rights. The respect to life and to physical integrity and personal safety must be guaranteed. Torture, cruel, inhuman and degrading treatment must not be practiced. Once that all of the above has been accomplished, the National Commission must be punctually notified

NATIONAL AFFAIRS

Universal Periodical Review 2009

Seeking to promote the new mechanism known as Universal Periodical Review (UPR), established by the Human Rights Council of the United Nations to revise the state of human rights in each country and to provide follow up on all recommendations presented before the Mexican State, the CNDH initiated a series of round tables. Specialists, scholars and members of civil societies used this opportunity to propose and point out measures and actions seeking to assure that recommendations are fulfilled, in addition to discussing aspects not observed by UPR.

For this reason, the round table titled The Human Right of health protection and HIV/AIDS was conducted on April 16th and 17th, in the facilities of the National Institute of Public Health, located in Cuernavaca, Morelos. An analysis of the current state of the Human Right of the Protection of Health in México was analyzed, along with progress and delays in this regard, in addition to observations and suggestions with regards to the following topics:

- Vision of the National Institute of Public Health;
- Responsibilities of Non-Government Organizations and private assistance for the health sector;
- Prevention and vigilance of infectious diseases;
- The Human Right to the protection of Health and HIV/AIDS;
- Vision of CENSIDA;
- The role of the pharmaceutical industry and innovations to HIV/AIDS and,
- Intervention on HIV/AIDS in penitentiaries located in the Federal District

Likewise, on April 22nd and 23rd, the round table titled México's Universal Periodical Review before the United Nations Human Rights Council was conducted in La Paz, Baja California Sur, with the collaboration of the Commission of Human Rights of the State of Baja California Sur. The subject titled Childhood, Women and the Environment was discussed on this event and participants of this particular round table were able to expose their ideas on the fulfillment of recommendations related to EPU in México before attendees comprised of public officials at state and municipal levels and members of non-government organizations, such as: representatives of UNICEF attached to the México Office for the United Nations High Commissioner of Human Rights; representatives of the Secretaries of Foreign Relations, Government, Environment and Natural Resources; the System for the Integral Development of Families (on a national scale); the Institute of Legal Investigations of the National Autonomous University of México; organizers for the International Defense of Children, the Network for the Rights of Children in México, and Pronatura México.

FOREIGN AFFAIRS

Conference on the Durban Exam and Conference on the role of National Human Rights Institutions for the implementation of the Durban Declaration and its pertaining Action Program

Representatives of 39 National Human Rights Institutions from all regions across the globe participated in the Conference of the Durban Examination, conducted from April 21 to April 24 2009, in Geneva, Switzerland.

In a statement pronounced during the conference, the National Human Rights Institutions (Spanish initials – INDH) congratulated themselves on having adopted the final paper and called for all countries to adhere to the document. All INDH indicated that the final paper is the result of long, frequent and hard negotiations, and that the consensus reached on most subjects offers a great sign of hope.

The final paper will provide a good foundation for progress in the struggle against racism and racial discrimination (including multiple types of discrimination). The document will also help promote cultural diversity, within a frame of indivisible and universal human rights. During an event parallel to the Conference on the role of INDH in the implementation of the Durban Declaration and its pertaining Action Program, conducted on April 20th 2009 and organized by the U.N.'s Office of the High Commissioner for Human Rights, with the collaboration of the International Coordination Committee for all INDH (Spanish initials – CIC), participating INDH recognized that racism manifests itself in different manners across the different regions and countries of the world. INDH identified and committed to reach progress in the 14 following main priorities:

- To promote objectives for the Durban process as a global effort to fight against racism.
- To promote ratification of International Treaties and to implement all dispositions at a national level.
- To promote the presentation of reports before the Committee for the Elimination of Racial Discrimination.
- To increase an already growing participation, using the United Nations and OACNUDH human rights system as a bi-directional process.
- To control racism at a national, regional and global level.
- To establish focal points on racism within INDH and networks in order to share good practices.
- To promote and participate in the development of national plans of action to fight racism.
- To exercise mandates with regards to the rights of Indigenous People, including the commitment of non-government institutions, Indigenous People, ethnic and religious minorities, vulnerable groups, corporations and the media.
- To assure that information on racism is gathered and that ethnic investigations are conducted; said information must contribute to the observatory that shall be developed by the High Commissioner for Human Rights.
- To commit fully and publicly on racism and to gain public trust for our procedures by becoming accessible to victims.
- In spite of the current atmosphere and financial limitations, we must make certain that governments provide INDH with adequate and effective resources, so that we can fulfill our obligations under the Principles of Paris, in independent and effective manner.

INDH present at the Conference of the Durban Exam mentioned that they will share these priorities with those INDH that could not attend. Additionally, absentees have already been invited to provide their support for the realization of said priorities. Different States, Non-government organizations and to different bodies attached to the United Nations also received invitations; particularly, the Office of the High Commissioner for Human Rights.

At the same time, all participating INDH offered their support to National Human Rights Commissions from Australia, Germany and New Zealand in particular, for their participation in the conference, due to the fact that their governments did not assist. The presence of the aforementioned countries' INDH was an important affirmation of the role of independence that National Institutions of Human Rights must play.

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