

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



PRESS RELEASE

Swiss judiciary must investigate the Nestlé case

ECCHR files complaint to the Federal Tribunal

Berlin / Zürich, 9 January 2014 – The European Center for Constitutional and Human Rights, together with Zürich-based attorneys Marcel Bosonnet and Florian Wick, have brought the case of the murdered trade unionist Luciano Romero to the Federal Tribunal. They represent the widow of the Colombian activist who had worked for a subsidiary of Nestlé. In December 2013, the Swiss Cantonal Court in Vaud rejected a complaint against the closing of investigations. The Cantonal Court thereby confirmed the reasoning of the Prosecutors Office that the investigations were statute-barred. After 15 months of inactivity, the Prosecutors had decided not to initiate investigations against the managers of Nestlé or the company itself.

In doing so, the Court failed to understand the statute of limitation with respect to the corporate liability, which does not depend on the date of the crime. The company has not undertaken any measures in order to remedy deficient organization in the company. This so-called organizational deficit, on which Nestlé's liability is founded, cannot therefore be statute-barred. Furthermore, the Court does not take into consideration the recent legal opinion of the Swiss Federal Council, which supports the reasoning of ECCHR and the attorneys Bosonnet and Wick.

The murder of another Nestlé-worker and trade unionist in Colombia in November 2013 clearly demonstrates that the position of Nestlé towards its trade unionists has not changed. This recent murder was again preceded by defamations through the Colombian Nestlé management. Contrary to statements made on the company's website and during conferences, Nestlé has clearly not yet adopted an approach to dealing with its workers and trade unionists, which does not present a danger to their lives.

ECCHR-General Secretary Wolfgang Kaleck has commented on the Court decision, stating: *"It is deeply upsetting that the Swiss judiciary is unwilling to investigate well-founded allegations against companies. Yet, it is clear that Swiss companies bear liability – including criminal liability – for human rights violations outside of Europe. If Swiss law does not currently enable the victims of such crimes to enforce their rights, then it must be reformed – just as the laws of other European states should be."*

Background

Since the submission of a criminal complaint in the German-speaking Canton of Zug in March 2012, by the European Center for Constitutional and Human Rights and the Colombian food industry trade union Sinaltrainal, no investigations have been initiated. Instead, the proceeding was passed on to the Canton of Vaud. Rather than promptly beginning an

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investigation, the prosecutors made use of various formalities to delay the proceedings until they could declare that the matter had become statute-barred.

The criminal complaint accused senior managers, as well as the Nestlé company itself, of negligently contributing to the murder by paramilitaries of Luciano Romero on 10 September 2005 in Valledupar, Colombia. Despite being informed about the threats made against Romero, they failed to use the resources available to them to prevent the murder. The direct perpetrators of the crime – those who actually carried out the murder – were convicted in Colombia in 2007, a rare occurrence in the country, which has the highest rate of murder and intimidation of trade unionists in the world. In its judgment, the Colombian court called for a criminal investigation into the role of Nestlé subsidiary Cicolac, but to date no such investigation has been carried out. Despite significant indications of criminal liability, no prosecutor in Switzerland or Colombia has initiated an investigation. It was left to Colombian lawyers and trade unionists together with the ECCHR to investigate the circumstances of the case and work on behalf of the family of Luciano Romero.

Further information is available at: <http://www.ecchr.de/index.php/nestle-518.html>

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