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## CIVISOL. Summary of Auto -275-11 (re T-724).

Supervisory Decision (Auto de Seguimiento) 268 / 10:

Motion for contempt after ruling T-724/03, filed on April 26, 2010 by Nohra Padilla the legal representative of the ARB a Federation of waste pickers' organizations, as the original petitioner against UAESP/Bogota District Capita, in front of Municipal Judge 43 who, on April 29, 2010, communicated his decision to abstain. The petitioner then filed the motion directly in front of the Constitutional Court of Colombia. The Third Revision Courtroom agreed to hear the motion through Supervisory Decision (Auto) 091 of 2010.

Country: Colombia

Thematic Focus:

Poverty, privatization, right to Livelihood, urban issues, right to work, right to entrepreneurship, Public utilities, development, right to water and sanitation, Public Procurement, Tenders, equality and nondiscrimination, right to life, minimal subsistence level, enforceability of escr, Obligation to adopt special protective measures, justiciability and Enforcement of ESCR, Realizing ESCR of vulnerable population, nonprofit organizations, social and solidarity economy, Informal Economy, Affirmative Action, Special treatment of disadvantaged groups, Progressive realization/non-retrogression.

Forum and Date of Decision:

Third Revision Courtroom of the Constitutional Court of Colombia, July 30 2010

Nature of the Case:

Motion of contempt for the Tutela 724-03 (injunction) filed by the legal representative of Federation of waste picker organizations (ARB) against the Public Utilities Executive Unit (UAESP) of the City of Bogota, regarding the rights to enjoy of an affirmative action for waste pickers' inclusion in waste management, the right to a minimum subsistence level in connection with work, and the rights to livelihood and entrepreneurship.

Summary:

Following Law 142 /1994, National Decrees 1713/02 and 838/05 as well as Resolution 1045/03 of the Ministry of Environment, Housing and Territorial Development and District Decree 312 of 2006, which adopted the Municipal Solid Waste Management Plan (PMIR), and in light of the judicial orders for an affirmative action of inclusion of informal waste pickers in public waste procurement, the UAESP had opened Tender LP/001 for the operation of Bogota's Doña Juana Sanitary Landfill. The operation included receiving waste transported for final disposition and biogas production, with 20% of it to be classified and eliminated through industrial recycling. Within this context the UAESP decided to craft the waste pickers' inclusion by requesting bidders to make waste pickers shareholders and thus partners as a condition of admissibility to the tender. In the ongoing process 3 bidders UTCG, UTGA, PFESA joined COOPNACBO COOPASOREMA and GAIEAREC as grassroots waste pickers organizations and shared 0.1 %, 0.5% and 15% participation, respectively.

The petitioners alleged that there was no minimal percentage of share participation from the corporate shares and that the second degree or federated organizations of waste pickers were excluded completely. Additionally they alleged that the inclusion was not any type of inclusion but an entrepreneurial type inclusion: to operate as public utilities providers as petitioned and ordered in the Cali case decided by Ruling T-291-09.

In response, the Court declared that the bidding process did not comply with the requirements and

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suspended it for amendment. The Court ordered inclusion as waste entrepreneurs as set in T-291-09, additionally foreseeing three elements to be modified in the tender LP/001 2010 for the purpose of giving effect to the judgment T-724 of 2003: (1) enabling the inclusion of second-level organizations of waste pickers or Federated Waste pickers Organizations; (2) the Doña Juana Tender should take into account the shareholding of such organizations as qualifying criteria; (3) it was ordered that recuperation of solid waste be included and considered as rating criteria, which would offer a source of work for recyclers.

Enforcement of the Decision and other Outcomes:

Arguments for change and protection granted by the Court began with prior constitutional decisions T-724-03, C-741-03 and T-291-09. Supervision to the precedent and judicial affirmative action for waste pickers' inclusion through formalization as municipal waste management public utilities providers was supervised by this Auto 268-10 and later through Auto 275-11.

-With the tender amended by the UAESP, ongoing bidders PSFEB, UTGA, UTCGDJ raised the percentage of labor to be employed in recuperating or harvesting solid waste in the landfill. PSFEB, originally partnering with grassroots organization GAIAREC, included the ARB - a federated organization of waste pickers - as a partner receiving 15% of shares; UTCGDJ included the Federation of Independent Recyclers Colombia - FEDERINCOL - with 1.5% and UTGA included the National Association of Industrial Recycling - ANIR - with 7.5% of the shares. Considering that these increments were developed in view of orders given by Auto 268/10, the Court declared that UAESP was found in compliance with the judicial orders imparted. It ordered the UAESP to "verify the nature of each and every organization active within Tender (LP) 001/10 of a basic or grassroots level as well as the second-degree or umbrella organization federating waste pickers' organizations."

-Through Auto 326/2010 once again the Court revisited the issue of whether there was contempt of court orders. On the September 22, 2010, the ARB filed a motion of contempt after Supervisory decisions or Autos 298 and 268 of 2010 in front of Municipal Judge 43 who abstained and referred to the Constitutional Court. The ARB alleged that in the Tender Process they were deemed to lack good faith by the UAESP director, that they had suffered direct and indirect discrimination, and UTCGDJ the Corporation that was awarded the Doña Juana Landfill concession and Federincol partner was the one that had offered the least shares of the three bidders. They requested the UAESP director to be replaced and the Court to prevent contempt of its orders before the parties who had been awarded contract would begin operations. In Auto 355/2010, after registering that many new writs of human rights protection had been filed by many different waste pickers grassroots associated with bidders and, for the case of the petitioner of contempt, one of its federated organizations seeking a writ in parallel to the case under examination, the Court explained that after having reviewed the audience of the tender, it found none of the allegations were even raised and no further evidence of direct or indirect discrimination has been found, so the motion was unsuccessful. With the Landfill concession contract awarded, and without prejudice to any other matters of judiciary control under the law, the court found UAESP was in compliance.

Significance:

The inclusion of impoverished, traditional and informal waste pickers by occupation in the waste management system is confirmed in an entrepreneurial venture, notably, as public utilities providers. Their inclusion, moreover, is preferential to operate any public waste valorizing activity, effectively applying ruling T-291-09 from Cali to Bogota.

The relevance of nonprofit organizations, particularly those based on solidarity economics, is confirmed for inclusive development. Following the change operated by the CIVISOL case and Ruling T-291-09, this is the second time that a bottom-up litigation driven policy reform has compelled socially inclusive and human rights-based privatization, the landfill was concessioned to a partnership between corporate capital and solidarity economy of waste pickers. The Court's progressive jurisprudence proved useful towards using law for advancing systemic poverty reduction.

The risk of instrumentalizing human rights efforts and corporate cooptation by and of occupational groups in informality/poverty became more explicit.

Attorneys involved: Unknown

Groups:

Although CIVISOL advised to file a motion for contempt after ruling 724 / 03 instead of filing a new petition of tutela (injunction), further support was denied.

Featured Attachments:

 [CIVISOL. Summary of Auto -275-11 \(re T-724\).docx](#)

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Tel: +1 212.681.1236 | [info@escr-net.org](mailto:info@escr-net.org)