



**PRELIMINARY COURT FOR CRIMINAL PROCEEDINGS No. 5
NATIONAL COURT
MADRID**

**PRELIMINARY PROCEEDINGS 150/2009-P
COMPLAINT FOR TORTURE**

RULING

In Madrid, January 10, 2013.

FACTUAL RECORD

ONE. - These proceedings continue in this court on the basis of the criminal complaint filed by Lahsen Ikassrien, Hamed Abderrahman Ahmed, Jamiel Abdulatif Al Banna, and Omar Deghayes for torture that they allegedly suffered at the United States military base in Guantanamo (Cuba).

Subsequently the complaint by the Association for the Dignity of Male and Female Prisoners of Spain was admitted into the court, as well as that of the United Left, the Free Association of Attorneys, and the Association for Human Rights of Spain, all of them as *acusación popular*.

TWO. - In due course a brief was presented by Attorney Francisco Javier Fernandez Estrada on behalf of both the *Center for Constitutional Rights of New York*, and the *European Center for Constitutional and Human Rights of Berlin*, requesting standing in these procedures, but it was not sufficiently clarified whether they were so requesting as *acusación popular* or private prosecution.

THREE. - By a ruling dated January 26, 2011, and as requested by reports from the Office of Public Prosecutor dated May 24, 2010, and October 18, 2010, those entities were asked that the representation claimed by those entities for persons who had been victims of the deeds under investigation be established with documentation, since the granting of power of attorney did not appear in the documentation along with the various briefs presented for the procedures legally admitted in accordance with Spanish legislation, by the aforementioned victims and with express reference to these proceedings being pursued before this court. Thus, in that ruling the two entities were requested that it be clarified whether the entities sought to have standing in the proceedings as Private Prosecution or as *Acusación Popular*.

FOUR.- In a brief presented in this Court on February 23, 2011, that request was met by the *Center of Constitutional Rights of New York* and the intention was stated to have standing as Private Prosecution on behalf of Mr. **Muhammed Khantummani**; on a brief on that same date the *European Center for Constitutional and Human Rights of Berlin* expressed its intention of having standing as *Acusación Popular*, invoking its



condition as a European legal entity.

When notice had been served to the Office of Public Prosecutor, the latter reported that allowing such standing as *Acusación Popular* was not admissible, inasmuch the equal standing of all citizens of the European Union does not extend so far as to grant rights to EU citizens in Spain when in countries of the European Union, Spaniards do not have the right to have standing as *acción popular*.

FIVE. - In a ruling dated April 13, 2011, it was decided that it was not admissible for the aforementioned *European Center for Constitutional Human Rights of Berlin* to have standing as *Acusación Popular*, without detriment to the powers that those in charge of that entity might exercise through Attorney Fernandez Estrada and through the legal counsel of other entities which already had standing in the case.

Likewise in that ruling it was decided to require that the *Center for Constitutional Rights of New York* present within one month the original of the power of attorney granted by the victims that are the object of the proceedings.

SIX. - On May 23, 2011, the original power of attorney sought from the *Center for Constitutional Rights of New York* was presented in the case.

Likewise, on August 18, 2011, the brief was presented in which the aforementioned *European Center for Constitutional and Human Rights of Berlin* requested that it have standing as Private Prosecution on behalf of Mr. **Murat Kurnaz**, and to that end it presented the original power of attorney from that person as victim of the deeds that are the object of these proceedings.

SEVEN. - After notice had been served to the Office of Public Prosecutor, the latter has stated that such standing as Private Prosecution may be admitted, after both have presented the original power of attorney from those harmed by the crime.

LEGAL ARGUMENTS

ONE. - Upon examination of the petition for standing as Private Prosecution by the *Center for Constitutional Rights of New York* which in turn represents Mr. **Muhammed Khantummani**, and that of the *European Center for Constitutional and Human Rights of Berlin*, which in turn represents Mr. **Murat Kurnaz**, and inasmuch as, as stated by the Office of Public Prosecutor, the aforementioned, even though they are foreign citizens, are harmed by the crime under investigation, and on the basis of the provisions of articles 270 and following of the Code of Criminal Procedure, **the complaint may properly be admitted into the proceedings**, and the complainants may be regarded as parties.

By virtue of the foregoing and other general and relevant articles



IRULE

Standing is granted in these proceedings as Private Prosecution to Attorney **Javier Fernandez Estrada**, to be led by the lawyers **Gonzalo Boyet Tuset, Esq.** and **Jaume Asens Llodr** on behalf of the *Center for Constitutional Rights of New York* which in turn represents Mr. **Muhammed Khantummani**, and on behalf of the *European center for Constitutional Rights of Berlin* which in turn represents Mr. **Murat Kurnaz**.

Let notice be given of this ruling to the parties represented and let the Office of Public Prosecutor be notified.

Thus, decided, ordered, and signed by PABLO RAFAEL RUZ GUTIERREZ, MAGISTRATE-JUDGE of Central Court for Preliminary Criminal Proceedings Num. 5 of the National Court.

In witness whereof.

E./

PROCEDURE. – What is decided is carried out subsequently, in witness whereof.