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Central Court for Criminal Proceedings No. 006
MADRID

90495

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PRELIMINARY PROCEEDINGS SHORT PROCEDURE 0000134 / 2009

Single Identification Number: 28079 27 2 2009 0002111

COURT ORDER OF MAGISTRATE-JUDGE
ELOY VELASCO NUÑEZ

RULING

In MADRID on January 28, 2011

FACTS

ONE: These proceedings began with a complaint on March 17, 2009 presented by the Association for the Dignity of Male and Female Prisoners of Spain against MR. ADDINGTON, MR. BYBEE, MR. FEITH, MR. HAYNES, MR. YOO, AND MR. GONZALEZ for alleged crimes against persons and goods protected in a situation of armed conflict; after assignment issues were resolved, it was assigned to this Court, which began these prior investigations on April 23, 2009.

TWO: On May 4, 2009, a ruling was issued in these procedures, stating that before deciding whether the complaint was to be admitted or not, international letters rogatory were to be sent to the United States, so that it would tell this Central Court for Preliminary Criminal Proceedings whether the events contained in it were or were not being investigated or prosecuted by its authorities, or if it is going to do so, indicating the specific authority doing so and the specific procedure.

After the international letters rogatory had been translated on May 6, 2009, they were sent by means of the presidency of the National Court on May 14, 2009 to the Spanish Central Authority (Ministry of Justice) to be sent to the United States.

THREE: On June 2, 2009 it was declared in the case that results were being awaited from the international letters rogatory in order to rule on the petition for standing in the court made as *acusaciones populares* by the Free Association of Lawyers, United Left, and Association For Human Rights of Spain.

FOUR: On April 7, 2010 a reminder on responding to the previous international letters rogatory to the United States was sent, and the parties were urged to report on the effect that the emendation to art. 23 of the LOPJ [Organic Law of the Judiciary] might have on this case by establishing new requirements for being able to prosecute in what has been called justice of universal prosecution. Upon



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receiving reply from the Office of Public Prosecutor and *Acusación Popular* appearing in the court, at the request of the Office of Public Prosecutor, on October 18, 2010 a further reminder was sent for responding to the international letters rogatory, but there has been no reply to it thus far.

FIVE: After combining various *Acusación Popular* writs asking to be allowed into the formality of the complaint, without waiting any longer for reply to the international letters rogatory to the United States, since not doing so was understood to be a delaying tactic, and after carrying out procedures to verify the nationality of some of the victims, the Office of Public Prosecutor has asked that the international letters rogatory continue to be awaited while at the same time information be requested from the United States on whether the step of appointing a special prosecutor has been taken to investigate the events occurring in Guantanamo. This ruling is a response on these matters.

LEGAL ARGUMENTS

SOLE POINT: Since too much time has passed since May 2009 when the international letters rogatory were sent to the United States to find out whether or not the events referred to in the complaint or procedure are being investigated or prosecuted before its authorities, or whether it is going to do so indicating specific authority and procedure, and since reminders of the international letters rogatory were sent on April 7, 2010 and October 18, 2010, the proper step now is to give a final deadline of one month, through the liaison attorney at the United States Embassy in Spain, in order to insist that it absolutely must be carried out, with the admonition that if a specific reply to what is requested is not received by March 1, 2011, the requirement for prosecution contained in art. 23.4, paragraphs 2 and 3 of the LOPJ (competent country or international tribunal which has begun or non-procedure which entails an investigation and an effective prosecution of the criminal acts) will be regarded as fulfilled; the next step will be to examine the admissibility or not of the complaint, and, if it is, the standing of the other three *acusaciones populares*, carrying out the investigation procedures requested, while awaiting a judgment of relevance. The occasion of the reminder should likewise be used, as requested by the Office of Public Prosecutor, to ask the US authorities whether they have appointed any special prosecutor to investigate the deeds that took place in the Guantanamo prisons as a result of the conflict of the terrorist attacks on the Twin Towers.

Moreover, since the investigation into the Spanish citizenship of the victims Hamed Aderrahman Ahmed, Reswad Abdulsam, and Lahcen Ikassrien has been thus far negative, the *acusación popular* is asked to present whatever evidence it has of them and the NIE [foreigner identity number], if it has it, date of birth, parentage, etc. so that once more they may be sent to the Ministry of the Interior so that it may report on the situation and nationality, reminding that institution of the report on the former Guantanamo prisoners that it has pending.

Upon examination of the aforementioned legal principles, and others generally and specifically applicable.



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I ORDER: Let the last communication / reminder be sent through the liaison attorney in the U.S. Embassy in Spain so that she may report whether the United States has appointed any special prosecutor to investigate the events that have taken place in the Guantanamo prisons as a result of the conflict of the Twin Towers attacks, insisting on a reply to the international letters rogatory sent in this case in May 2009, with reminders on April 7, 2010 and October 18, 2010 (copy of which shall accompany in Spanish and English), with the warning that if it is not done within a one-month period which will expire this coming March 1, 2011, it will be understood that the requirement that it is not being pursued before the competent authority of that country has been met; at that point it will have to be decided whether the complaint is to be admitted or not, as well as the standing in the court of the three *acusaciones populares*, and the investigatory procedures to be carried out, if any.

The *acusación popular* is to be requested to present whatever evidence it has of the victims' nationality and connection to Spain, and the NIE, if any, date and place of birth, parentage, etc. so that they may be sent again to the Ministry of the Interior so it may report on their status and nationality; that institution is reminded of the report on the former Guantanamo prisoners that it has pending.

So decided, ordered, and signed by HON. ELOY VELASCO NUÑEZ, MAGISTRATE-JUDGE of Central Preliminary Court of Criminal Proceedings no. 006 of MADRID. – In witness whereof.

MAGISTRATE- JUDGE

CLERK

PROCEDURE – What is ordered is carried out immediately. In witness whereof.