

**Proceeding: Committal Proceeding 150/09--N**  
**Offense: Torture and others.**  
**CENTRAL INVESTIGATIVE COURT**  
**NUMBER FIVE**  
**NATIONAL CRIMINAL AND**  
**ADMINISTRATIVE COURT**  
**MADRID**

**DECISION**

**IN MADRID, THE TWENTY-SIXTH OF MAY, TWO THOUSAND NINE.**

**STATEMENT OF FACTS**

**ONE.**— On 04.27.09, a Ruling was issued transmitting an official notice to Central Investigative Court number Two of this National Criminal and Administrative Court, instructing that “*prior to conducting further proceedings, from this ruling, report and transmit, if appropriate, to this Court, and in order to rule on the motion of the Office of the Public Prosecutor regarding jurisdiction, those records that exist in relation to the specific investigation of the facts referenced in these proceedings, according to the account in this ruling and the transcribed testimony of such proceedings and, if appropriate, in view of the same to indicate if there is any interest in raising any issues of positive jurisdiction*”.

**TWO.**— On May 7, 2009, an Official Notice dated the 5th of the same month and year was received from Central Investigative Court number Two, which read “*In accordance with the ruling in the aforementioned proceeding in response to the request by that Court dated April 28 of this year, I hereby inform Your Honor that the specific facts to which the transmitted testimony of Committal Proceeding 150/2009 of that Court refer, based upon what can be gathered from the record to date in Committal Proceeding 109/2006 of this Central Investigative Court no. 2, have no relation to the facts for which the referenced proceeding was brought before this Court, which proceeding was initiated on the basis of the hypothesis that, throughout 2004 and 2005, members of foreign intelligence services may have captured alleged terrorists in other countries and, using various aircraft, may have illegally detained and transferred such alleged terrorists to specific locations, also in foreign nations, during which time, they may have made layover stops in various Spanish airports for execution and completion of such alleged illegal actions*”.

**THREE.**— On May 7, 2009, a ruling instructing that the aforementioned Official Notice be included in the case record and notified to the parties was issued.

**FOUR.**— On 5.06.09 and 05.12.09, Jamiel Abdul Latif al Banna and Omar Deghayes filed briefs, reaffirming the contents of the criminal complaint and appearing as aggrieved parties.

### **LEGAL GROUNDS.**

**ONE.**— Having reviewed the Official Notice transmitted by the presiding Magistrate/Judge of Central Investigative Court number Two of this National Criminal and Administrative Court, it is clear that there are no supporting facts and that there is no correlation between the facts investigated herein and those in Committal Proceeding 109/2006 which “..., *have no relation* ...”, as the aforementioned Official Notice states.

Subsequent to completion of the prior proceeding, which was necessary in order to determine without discussion the jurisdiction of Central Investigative Court number Five in these Proceedings, a matter not debated by Central Investigative Court number Two, pursuant to Arts. 299, 777 and 311 of the Criminal Procedure Law, one must conduct the essential proceedings for establishing the purpose of the process and the scope of the investigation as well as determining the value of the documents on which the investigation is based and that allude to the repeated practice of torture and inhumane and degrading treatment, to which the Order initiating the 04.27.09 Committal Proceedings alluded.

**TWO.**— As the criminal acts occurred outside of Spain and as there is the possibility that other judicial processes have been opened in other countries, specifically Great Britain and the United States, in order to verify the occurrence of the torture subject of the complaint, it is appropriate to confirm that possibility by resorting to international mutual judicial assistance and the scope that such assistance permits. Because and, although the Geneva Conventions of 1949 and those mentioned in the Order opening the proceedings (assumed to be reproduced herein) establish concurrent jurisdiction, not be excluded, as a precautionary measure, is the importance of prior verification of the existence of previous investigations or, if these have been initiated at the same time as the request for information, so as to be able to consider the overlap and decide whether to transfer or maintain jurisdiction.

The reason for requesting information from Great Britain arises from the fact that, after this Court invalidated the European Detention Orders dated March 5, 2005 for Jamiel Abdul Latif al Banna and Omar Deghayes, no information has been received from British judicial authorities regarding whether proceedings investigating the alleged torture and inhumane and degrading treatment complained of have been initiated; such investigation is a priority and, therefore, if it exists, would have preference over Spanish jurisdiction.

Similarly, one must determine whether the United States of America, and more specifically, the competent judicial authorities, have initiated any investigation related to the torture complained of and allegedly committed at the Guantánamo military, including the four cases subject of this proceeding.

**THREE.**— Applying the same previously mentioned principles and Arts. 109 and 110 of the Criminal Procedure Law, the proceeding must be offered to those who have not appearing in the matter. Specifically, Lahcen Iksarrien, the three other parties being represented in the criminal proceeding by an attorney and defended by counsel.

In consideration whereof and based upon the articles of general application

**IT IS ORDERED**

That International Letters Rogatory be transmitted to the Judicial authorities of Great Britain in order that they may inform this Court as to whether there exists any criminal investigation substantiating the alleged torture, and inhumane and degrading treatment suffered by Jamiel Abdul Latif al Banna and Omar Deghayes during their detention at the Guantánamo (Cuba) military base until their surrender to British authorities.

That International Letters Rogatory be transmitted to the competent Judicial authorities of the United States of America in order that:

- a) They may inform this Court as to whether there exists any criminal investigation substantiating the alleged torture, and inhumane and degrading treatment suffered since their detention by the Spanish citizen Hamed Abderraman Ahmed, the Palestinian citizen Jamiel Abdul Latif al Banna, the Libyan citizen Omar Deghayes and the Moroccan national Lahcen Iksarrien who is a legal resident of Spain, until their respective release at the Guantánamo (Cuba) military base.
- b) If there is a legal possibility that the victims may press such investigation, alongside the investigation that the Attorney General may commence or deny.

So resolved, ordered and signed by DR. BALTASAR GARZON REAL, MAGISTRATE/JUDGE OF Central Investigative Court number Five.- To all of which I attest.

E/  
**PROCESSING.**- I attest that the ruling issued was immediately executed.