REPORT ON THE INVOLVEMENT OF THE OFFICE OF PUBLIC PROSECUTOR IN PARTICULAR COURT PROCEDURES AFFECTED BY THE PUBLICATION OF INTERNATIONAL DOCUMENTS OF THE AMERICAN DIPLOMATIC SERVICE

As is well known, in recent weeks a series of fragments of presumed confidential documents apparently obtained unlawfully from the communications system of the United States diplomatic service have been published, along with opinions and assessments generally without objective information on the involvement and activity of agencies of the Office of Public Prosecutor which are mentioned in those documents.

In order to make clear the activity of the Office of Public Prosecutor and its representatives in relation to those events, at the direction of the Attorney General, the relevant information has been gathered from the prosecution office of the National court, along with the collection of information from data in the files of the Office of Prosecutor, leading to the following result:

I. ACTIVITY OF THE OFFICE OF PUBLIC PROSECUTOR IN RELATION TO CASE Nº 27/2007 OF CENTRAL COURT FOR PRELIMINARY CRIMINAL PROCEEDINGS NUMBER 1 OF THE NATIONAL COURT, PURSUED IN RELATION TO THE DEATH OF MR. JOSÉ COUSO PERNUY.

Mr. José Couso died April 8, 2003 while he was working as a television cameraman at the Palestine Hotel in Baghdad, during the military operations then taking place in the city.

The complaint for this event was presented on May 27, 2003 in Central Court for Preliminary Criminal Proceedings nº 6.

Upon the report by the office of prosecution of the National Court, then headed by the Honorable Eduardo Fungairiño Bringas, in which it was held that Spanish courts had no jurisdiction for trying the matter, the aforementioned court body sent the proceedings to Central Court for Preliminary Criminal Proceedings nº 1 to be added to the procedure followed by the latter as preliminary procedures 99/2003, filed by means of court order on March 25, 2003 by virtue of complaint presented against those then occupying the positions of president of the United States, prime minister of Great Britain, and president of the Spanish government, because of the military intervention in Iraq.

After various procedural steps, and without ruling on the claim of lack of jurisdiction presented by the Office of Public Prosecutor, on April 21, 2004 the investigative magistrates court sent letters rogatory to the United States authorities seeking documentation on the case and information on the existence of any investigation in that country. On November 7, 2005 it allowed filing of a complaint

brought by a private prosecutor against a lieutenant colonel, a captain, and a sergeant in the United States Army.

On November 11, 2005 the Office of Public Prosecutor filed an appeal against that order because it believed, as it had argued from the beginning, that Spanish jurisdiction is not competent to try these matters, since it disagreed with the legal judgment made by the complainants and accepted by the examining judge, according to which the Spanish courts would have jurisdiction. Indeed, the complaint regarded the deeds as a war crime and therefore against the international community, in relation to a crime of murder, taking into account the result produced. The appeal prepared by the Office of Prosecutor, however, argued that the defining elements of such crimes were not present, nor were there any of the grounds on which art. 23 of the Organic Law of the Judiciary allows extraterritorial exercise of Spanish jurisdiction: the jurisdictional grounds of the standing of the perpetrators was not present, because the presumed perpetrators were not Spanish nationals (our legislation does not make provision for jurisdictional grounds by reason of standing of the victim); nor, finally, did the crimes described and listed in the complaint correspond with any of those included in the list in article 23.3 L.O.P.J., [Organic law of the Judiciary] in applying the so-called principle of real protection.

Based on these procedures, and at the request of the parties concerned, on November 29, 2005, the Attorney General received at the headquarters of his agency a delegation of relatives of the deceased Mr. Couso. He first expressed to them his own condolences and feeing of solidarity and those of the entire institution for their loss, which had taken place in such dramatic circumstances. He then went on to explain with utter clarity and transparency the legal position of the Office of Public Prosecutor as expressed in the aforementioned procedures of the office of prosecutor of the National Court starting in June 2003, along with the legal grounds on which such procedure was based.

In the course of that meeting those present expressed their concern that the letters rogatory sent to the United States over a year earlier had not been answered. The Attorney General, within the good relationships of international criminal cooperation maintained with the American Office of Attorney General, offered to express the need that the international letters rogatory be answered.

In meeting that commitment, on December 22, there was a meeting of the Attorney General, accompanied by the chief prosecutor of the Technical Secretariat with the United States ambassador, in the framework or normal cooperation maintained by the Spanish Office of Attorney General with the Department of Justice of that country. As is known, that department is headed by the attorney general of the United States, who according to the American constitutional model, is part of the administration. Hence the responsibility for acting as the highest channel of communication in these matters falls to the head of its diplomatic representation in Spain.

Even though ordinarily matters of international criminal cooperation are handled by the embassy legal advisor (who acts as liaison magistrate) with the Technical Secretariat of the Office of Attorney General or with the Office of Prosecutor of the National Court (competent in the area of extraditions, terrorism, etc.), the ambassador is generally present at the highest level meetings, for example when high-level figures of the American Justice Department or attorneys generals themselves visit the Spanish Office of Attorney General.

At that meeting, held in an atmosphere of cordiality and courtesy, the Attorney General, referring to our good relations of cooperation, pointed to the need to give a timely response to the request for international cooperation sent in connection with this matter, pointing out that replying to letters rogatory constitutes an international obligation stated in our Cooperation Agreement, and that the Spanish legal bodies duly comply with that function.

At that same meeting, the ambassador expressed interest in learning about the situation of the procedure followed against the three soldiers of his country's army, on which the judge had officially requested information from his government. Accordingly, in view of the obvious and legitimate interest of the state which could even possibly be considered secondarily liable for the events, pursuant to Spanish legislation, the attorney general told him, in terms similar to those used in the meeting with the relatives of the victim, of the procedural position that the Office of Prosecutor had been maintaining since 2003. At this point it is well to explain, even though it is an obvious fact to any jurist familiar with the system of relationships of international legal cooperation, that one of the essential instruments of that that system is *exchange of information on the legal system and the legislation of each country, legislative activities and changes, and concrete steps for enforcement of laws* (as is stated textually, for example, in the Memorandum of Understanding in effect in the area of cooperation between the Office of Public Prosecutor of the Government of the Kingdom of Spain and the Department of Justice of the United States).

In fact, on January 26, 2006, immediately after this meeting (and almost two years after the letters rogatory were sent by Central Court for Preliminary Criminal Proceedings nº 1), the American Department of Justice replied in detail to the court request. That reply is incorporated into the court record, and the Office of Attorney General believed that the commitment assumed in the meeting with Mr. Couso's family members had been fulfilled.

On *March 8* Section Two of the Criminal Division of the National Court issued a Ruling by which, taking into account the appeals filed by the Office of Attorney General, it declared that Spanish Courts did not have jurisdiction to try these matters, and revoked the orders for pursuit and capture of those involved, and ordered that the procedures be filed away.

When that Ruling was appealed due to the accusations presented, Division Two of the Supreme Court of Justice partially accepted the appeals, through a ruling on

December 11, 2006. Based on this ruling, by which the competence of Spanish jurisdiction to try the events is recognized (based on the assessment of the examining magistrate which, as has been stated, is not shared by the Office of Public Prosecutor), and it nullifies the stay of proceedings, opening the way for the investigation to proceed; the Office of Attorney General has not challenged carrying out the procedure or taking evidence. Nevertheless, it continues to maintain, in view of the arguments employed by the Supreme Court of Justice, and in legitimate exercise of the autonomy of the Office of Public Prosecutor recognized by the Constitution and the law, the judgment reached and held by the Office of Prosecutor of the National Court, headed at that time by his Honor, Javier Zaragoza Aguado, that the conduct of the accused soldiers did not meet the definitions of crimes described by the examining judge in his bill of indictment.

Based on that ruling issued by the Supreme Court of Justice, during the informal reception for introducing the new legal counsel of the United States Embassy which took place on January 25, 2007 at the embassy offices, the ambassador again expressed interest in the progress of the proceedings. In reply, the Attorney General, after emphasizing the independence of the Spanish justice system clearly shown in the strictly legal debate surrounding this resolution, repeated to him the position of the Office of Attorney General, in the terms that it had been maintaining since 2003, as has already been indicated.

Likewise in view of the ruling of the Supreme Court of Justice, on January 17, 2007, Mr. Javier Couso Pernuy had addressed the Attorney General requesting a new meeting. In order to keep scheduling problems, which as was explained in detail to the petitioner, prevented an immediate reply, from postponing the meeting too much, through a note written February 23, the chief district prosecutor of the Technical Secretariat offered the alternative of meeting with them herself, personally and immediately. There is no record in the files of this body of whether there was any reply to that offer.

On April 27, 2007, the bill of indictment was issued by the court against the three American soldiers for allegedly committing a crime against the international community as in article 611.1 in relation to art. 608.3, and a crime of murder from art. 139 of the Criminal Code.

In accordance with its stated analysis in disagreement with that legal assessment, the Office of Public Prosecutor presented an appeal for amendment and a subsidiary appeal against it on November 5, 2007. It based that appeal, briefly, on the fact that after the procedures had been decided and carried out, no new information had been found that would allow for considering the conduct of those accused to be indiscriminate or excessive (as was required by the laws invoked by the investigating judge in terms of legal definition), inasmuch as the shooting carried out was aimed at a target from which it was believed that a military action was being carried out against the accused. It could not therefore be concluded that it was an intentional malicious act aimed at causing the death of protected civilians but rather an act of war carried out against a mistakenly identified apparent enemy, moreover in a context of open war

between the USA and IRAQ. Spanish jurisdiction was not entitled to enter into discerning the legal powers granted by American legislation to its officials to declare a war or not, or to enter into an armed conflict without that prior declaration.

The parties concerned were obviously aware of that appeal and its content and therefore of the reasons repeated there by the attorney general. That is plainly shown by the fact that on May 25 and with explicit reference to the activity of the Office of Attorney General, Mr. Javier Couso notified the Central Government Office in Madrid that a protest demonstration was to be held in front of the headquarters of the Office of Attorney General, which in fact took place on June 1, 2007, according to a report sent by that office to this agency.

The Attorney General, as president of the Ibero-American Association of Offices of Attorney General, wrote to the United States ambassador on July 18, 2007, in order to pass on the invitation to the American attorney general, Mr. Gonzales, to attend the meeting of attorneys general, which was going to take place in Madrid in October. In commenting on different matters in the legal realm affecting persons or interests of the two countries (including, for example, the publicly known case of a mother imprisoned by a court decision in the United States, for events having to do with alleged failure to comply with the arrangement of visits granted to the father to visit the daughter), the ambassador mentioned the *Couso* matter. The attorney general simply repeated to him the position of the Spanish Office of Attorney General, legitimately in disagreement with the legal assessment made by the examining magistrate, and that that position had remained unchanged from the time when the case began to be processed.

By a ruling on May 13, 2008, Section Two of the Division of Criminal Matters of the National Court considered the motion for appeal of the Office of Public Prosecutor, and again supported the position of the Office of Public Prosecutor, and nullified the proceedings and other stays of procedure granted.

Nevertheless, on May 21, 2009 the examining magistrate court again agreed to try the three soldiers involved in the crimes already listed. On May 25 the Office of Attorney General again filed the corresponding appeal, insisting on the arguments unchangingly held by the Attorney General about the legal appraisal of the facts. That appeal was again considered, by means of a Ruling on July 14, 2009, by Section 2 of the Division of Criminal Matters of the National Court, which nullified the proceedings and other stays of procedure granted, and ordered that the case be immediately closed, inasmuch as the new evidence and procedures did not allow it to be concluded that the actions attributed to those accused constitute the crimes specified in the bill of indictment.

After the case was declared concluded by ruling on October 23, 2009, Section 3 of the Division of Criminal Matters of the National Court ruled that the procedures were to be dismissed. When that ruling was appealed, the Supreme Court of Justice through ruling on July 13, 2010 considered the appeal filed for the private accusations and the *acusaciones populares,* and ordered that a series of investigatory procedures that had

not been done when the stay was ordered be carried out. That is the phase of the case at present.

In short, the legal position of the Office of Attorney General on how the matter should be defined legally has remained unchanged over time, from the beginning of the case, when neither the current attorney general nor the current chief prosecutor of the National Court occupied those positions, until the present when the procedures carried out have not, in the judgment of the Office of Public Prosecutor, provided minimally sufficient data on the existence of the elements to define the crime for which action was taken against the alleged perpetrators of the acts. All of that is stated with full respect for the legal assessment and procedural activity of the other parties involved, and based on a strictly legal reflection completely apart from any pressure (which has not existed, and if it has been attempted has certainly not been recognized as such) from the parties in the case or from third parties, whether pressure groups, the media, individuals, or social or political groups whose interests might represent national or foreign governments.

II. ACTIVITY OF THE OFFICE OF PUBLIC PROSECUTOR IN RELATION TO THE INVESTIGATION OF THE SO-CALLED "SECRET CIA FLIGHTS"

The first time that the Office of Public Prosecutor had direct knowledge of the issue of alleged flights and even landings on Spanish territory of aircraft that presumably could transport or be intended to transport people unlawfully detained by the United States secret services was a complaint filed by a group of citizens in the Office of Attorney General in Palma de Mallorca, by virtue of which Office of Attorney General of Baleares ordered that investigation procedures be initiated on March 15, 2005.

Fifteen days later a brief was received at the Office of Attorney General signed by the honorable deputies Mr. Joan Herrera and Mr. Gaspar Llamazares about the alleged use of the Son Sant Joan Airport for operations of this kind. That brief was sent to the Office of Attorney General in Baleares in order to be brought into the investigation already underway.

On July 29 of that year, pursuant to what is set forth in article 773.2 of the Law of Criminal Prosecution, the court procedures had to be sent to Examining Magistrate's Court number 7 of Palma de Mallorca, which by reason of complaints and accusation over the same deeds had initiated preliminary proceedings number 2630/2005.

Likewise, on November 17, 2005 one of the notices sent to the Office of Attorney General by Deputy Llamazares Trigo which will be considered later, had opened the way, after its transfer by the Technical Secretariat of the Office of Attorney General, to simultaneous initiation of investigation procedures in Tenerife and in the High Court of Justice (as it was then known) of the Canary Islands, in order to gather information

about certain events presumed to have occurred in their territories, in order to determine their relationship, if any, with those investigated by the court in Baleares.

Finally, a report was received here at the Office of Attorney General on April 5, 2006 accompanied by documentation from the non-governmental organization Amnesty International. Copies of it were sent to the aforementioned offices of attorney general of Baleares, Canary Islands and Tenerife, and also to the (then) offices of prosecution of the High Court of Justice of Catalonia and of the Provincial Court of Malaga, because it had to do with events presumed to have taken place on their territory, and it also led to the inception of procedures in both prosecution offices.

When the court of Palma de Mallorca ruled for ceasing and ceding to the National Court, the Office of Public Prosecutor believed in principle (motions on October 26 and December 1, 2005) that that cessation was not in order but its position was rejected, and so Central Court for Preliminary Criminal Proceedings Number 2, definitively took on competency, to which it was entitled in the normal schedule, by initiation of Preliminary Proceedings 109/2006. At that time, by imperative of the already mentioned article 773 of the Code of Criminal Procedure, the Office of Attorney General sent the proper notice to all prosecution offices which had begun investigatory procedures to halt them, and to send the proceedings to the competent Central Court for Preliminary Criminal Proceedings. Those prosecution offices did as ordered.

Thus, and after having reported favorably on July 12, 2006 on the standing of the *acusaciones populares*, the prosecution office of the National Court, following its own independently reached professional legal judgment began to perform its proper function with regard to the actively pursuing the procedure of court investigation.

Along these lines, and among other proceedings, on December 29, 2006, the Attorney General told the Examining Magistrate Court that it was proper to ask the National Intelligence Center (CNI – [C*entro Nacional de Inteligencia*]) to send information on the flights under investigation, requesting declassification of that information insofar as it was protected by the Law of Official Secrets. The media were informed of this request, pursuant to the provisions in article 4.5 of the Organic Law of the Office of Public Prosecutor and Instruction 3/2005, April 7, 2005 on the relations of the Office of Public Prosecutor with those media, some of which reported on what had been done.

On January 24, 2007 the Office of Attorney General requested that the CNI provide specific information on particular flights.

After the aforementioned information had been gathered and published by the media, at the time of one of those meetings that are held by the prosecutors of the National Court with the liaison magistrates, representatives of ministers of justice, or departments of justice of countries with which Spain maintains close and reciprocal relations of legal cooperation, the American authorities asked for information on the

status of this procedure, and they were given the same information that, as has been said, was already public and had been published.

They were naturally not given any information about the possible content of the classified information, inasmuch as for obvious reasons it was not known, nor could it be known, by any member of the Office of Public Prosecutor, because, as is likewise known, the members of the Office of Public Prosecutor are not authorized to have access to such information, and they are of course aware that the unauthorized obtaining of information of this kind, and leaking or publishing it in any case constitutes a criminal act. That, however, is certainly not sufficient to prevent, outside the scope of activity of the Attorney General, subjective assessments, conjectures, or hypotheses that those involved in that meeting or any other persons led by any type of interest, lawful or not, could or can, in view of information published and provided by this ministry, or other information obtained legally or illegally, elaborate on their own, or transmit to others about the real possibilities that the Spanish secret service might have information substantiating the clandestine activities being denounced.

On January 31, 2007 the examining magistrates court decided, among other matters, and in line with the judgment of the Office of Public Prosecutor, to request declassification of any information that might be held by the CNI with regard to the CIA flights, and presented a statement with reasons along those lines to the minister of defense. The documents were in fact declassified and became part of the proceedings by a decision on February 27, 2007, practically two months after the Office of Public Prosecutor stated that it supported their declassification. On a ruling of that same date and also in accordance with the decision of the Office of Public Prosecutor, it was decided to send letters rogatory to request information on air traffic control from officials in Portugal. That step had been requested by the representation of the United Left, acting as *acusación popular.*

Likewise, the Office of Public Prosecutor has ruled favorably in successive rulings on numerous procedures of investigation proposed by the other accusations. The office of attorney general has requested that many others be carried out (for example, ruling on December 4, 2008), and it has been opposed solely to those requested by parties, which because they were not specific or were not relevant to the facts from the standpoint of the legality advocated by the Office of Public Prosecutor, were not regarded as really useful for the purpose of clarifying the facts which governs the criminal process. Along these lines, it is well to note that this way of acting of the Office of Public Prosecutor has been substantially confirmed in the successive rulings issued by the examining magistrate.

Among these activities, special note should be given, because of its special importance for the progress of the investigation, to the contribution by the prosecutor of the National Court, on December 16, 2008, of certain documentation sent by a non-governmental association, on the involvement of one of the aircraft under investigation in this procedure, which made it possible to pursue a significant line of investigation, and the ruling issued March 30, 2009 aimed at pursuing the investigation of the true

identities of particular United States agents who might have been involved in the transfer or presence of Guantanamo prisoners, whether they had operated with identity concealed through false documentation, and, if so, whether those events took place with the authorization or knowledge of the Spanish authorities. It also sought to pursue delving deeper into the investigation of any possible participation of Spanish officials in events related to persons confined at Guantanamo.

As a result of procedures carried out thus far, the office of prosecutor of the National Court believes to begin with, that "*unlawful detention of citizens without judicial oversight and their transfer to detention centers where interrogations take place with the use of physical and psychological coercion, [and] interrogations conducted without guarantees, may on the face of it constitute a crime of torture, pursuant to the provisions of article 174 of the Criminal Code*" (ruling May 7, 2007). It believes that from what has been presented there is no evidence that arrests or torture have been carried out in Spain by foreign agents on persons suspected of being involved in terrorist actions, nor have its bases been used for the transfer of detainees, even though "e*vidence seems to indicate that the crew of a CIA flight made a stop in Palma de Mallorca (…),"* in which a German citizen of Syrian origin was transported «*who testified in this procedure telling of the torture to which he was subjected; there is a procedure in Germany for these events. Cooperation was given to the German authorities in connection with international letters rogatory to which the information existing in Spain was provided.*" It may likewise be concluded from the court procedures that "*the real identity of the crew members was concealed with documentation prepared for that purpose,"* although, "*there is no evidence that they had any kind of authorization from the Spanish authorities to operate in the country with assumed identity and in carrying out official missions."*

Accordingly, the Attorney General, "*inasmuch as the deeds would constitute a crime of falsification and use of official false document in Spain*," requested that letters rogatory be sent to the United Kingdom[*] in order to carry out the procedures necessary to determine the true identity of the crew members, and once that identity was established that "*an international order of capture be issued against them for the crime of falsification of official document; it should be noted that the German authorities have issued an order of capture against them for the kidnapping of the aforementioned German citizen."*

It is therefore obvious that in the context of the evident objective difficulty entailed in an investigation with the characteristics just described, the Office of Public Prosecutor, and particularly the office of prosecution of the National Court, have maintained and do maintain at all times, an active stance toward pursuing and bringing before the court those persons who through the investigatory procedure may be held as responsible for the deeds that this ministry unequivocally regards as constituting a crime that can be prosecuted before the Spanish legal system.

[*] [sic- *Reino Unido*; sense seems to require *Estados Unidos* = "United States"]

Finally, it must be stated that in relation to the case under examination, the Office of Attorney General and the prosecution office of the National Court have taken special care, given the unequivocal social importance of the deeds under investigation in this procedure, to make known publicly all information not affected by procedural secrecy, which in particular has to do with the activity of the Office of Attorney General. Thus this observance of the duty of informing the public deriving from the already citied article 4.3 E.O.M.F. has complemented the information that it has been possible to provide on specific occasions, to institutions or persons holding a legitimate concern related to the object or result of the investigations.

Thus, it is not only the American authorities, no doubt affected by the object of the investigation, who have obtained information from the Attorney General in the context of the ordinary relationships of cooperation already described elsewhere in this report. Likewise, by way of example and as has already been indicated, the organization Amnesty International was specifically informed at the proper time of the activity of this Office of Public Prosecutor, as was also the deputy and spokesperson for the parliamentary caucus of the United Left, Mr. Llamazares Trigo, who as representative of popular sovereignty, requested and received many times information on the status and the procedure and the activity in that procedure here at the Office of Public Prosecutor, all documented in the files here at the Office of Public Prosecutor.

All of that no doubt makes it possible to understand the emphasis with which the honorable prosecutor involved in the procedure, by means of a report sent here to the Office of Attorney General, claims that "*no recommendation, hint, or instruction came to the Office of Attorney General directly or indirectly from authorities of the government of Spain on the level of information that ought to be given. No pressure was exerted on people at the Office of Attorney General by any Spanish or foreign official.*" .

III. INTERVENTION OF THE OFFICE OF PUBLIC PROSECUTOR IN THE PROCEDURE ON THE GUANTANAMO DETENTION CENTER

In March 2009 the Association for the Dignity of Male and Female Prisoners of Spain presented a complaint directly to Central Court for Preliminary Criminal Proceedings Number 5 against various legal advisors of the administration of the United States President George W. Bush for crimes allegedly committed against persons and goods in a case of armed conflict, related – according to the bill of complaint itself – to the unlawful detention and torture of the people interned unlawfully at the Guantanamo detention center starting in January 2002. The complainants seemed to regarded it as proper to assign the matter to Central Court for Preliminary Criminal Proceedings no.º 5 so as to become part of Case 25/03, presumably in application of the rules for assignment of the National Court, which establish how accusations, complaints, procedures, and court records are to be sent by "antecedents" (Rules 1, 5 and 11).

However, when by means of an order on March 23, the examining magistrate made transfer to the Office of Public Prosecutor for purposes of ruling on competency, the attorney general observed that the procedure handled by Central Court for Preliminary Criminal Proceedings number 5 did not in the least constitute an "antecedent" for the court procedures indicated of the complaint filed, inasmuch as in reality the case in question was being pursued against four presumed Al Qaeda terrorists who had been tried for crimes of belonging to a terrorist organization precisely during their internment at Guantanamo, after the examining magistrate himself had sent Spanish police officials to interview them in that prison which the complainants in their writ described as a center of unlawful detention and torture.

There was also the circumstance that two of those on trial had already been handed over to Spain, where both were accused and found not guilty (one by the National Court and the other by the Supreme Court of Justice). The other two were handed over to Great Britain. Separate European orders of detention had been given by the examining magistrates court. In the end they were not acted upon, and the procedure was filed away.

Accordingly, on April 17, the office of prosecution of the National Court, without ever questioning the jurisdiction of Spanish courts for trying the deeds and in strict compliance with the duty of guarding over the integrity of that jurisdiction and the competence of judges and courts imposed on it expressly by article 3.8 of the Organic Law of the Office of Public Prosecutor, issued a report stating that the complaint had been presented and turned over to Central Court for Preliminary Criminal Proceedings no. 5, thereby violating the rules for assignment, inasmuch as:

a) the deeds listed in the complaint, having to do with legal advice for implementing the strategy adopted by US authorities and officials against hundreds of people regarded as "unlawful combatants," because of their assumed connection to international terrorism, were radically different from those that (as has already been indicated) were the object of investigation in Case 25/03, and

b) those who at one time had been tried for crimes of terrorism were coming to occupy, according to the complaint, the position of victims, and hence there was not the slightest identity of perpetrators which could justify the addition of the deeds related there to the case in question; it was unthinkable – except in the event of manifest violation of art. 300 and related articles of the law of Criminal Prosecution – that in the same criminal case where the participation of particular defendants in crimes of terrorism had been investigated, the allegedly unlawful conduct of police officials involved in the investigation would also be investigated.

Indeed, Central Court for Preliminary Criminal Proceedings no. 5 received the accusations from the Prosecutor's Office, and then sent the complaint to the Office of Dean which in strict compliance with the rules for assignment passed it to Central Court for Preliminary Criminal Proceedings No. 6. This examining magistrates court filed

Preliminary Proceedings 134/09 through an order on April 23, and through an order on May 4 it ruled that before deciding on whether the procedure of complaint could be admitted or not, it was sending letters rogatory to United States authorities so that they would report on whether the deeds were under investigation or prosecution in that country, given its position of preferential jurisdiction, both in application of the principle of territoriality and the principle of identity of perpetrator (nationality of those presumably responsible).

Nevertheless, parallel to this procedural path which legally authorized Central Court for Preliminary Criminal Proceedings no. 6 as the sole court body competent for trying the matter, Central Court for Preliminary Criminal Proceedings no 5. brought a testimony of private citizens from the court procedures sent to the Office of Dean – which included the initial complaint – thereby retaining competency on the alleged tortures and unlawful detentions claimed by the aforementioned defendants (in Case 25/03).

When that testimony was sent to the Office of Dean, the latter in turn sent it back for "antecedents" to Central Court for Preliminary Criminal Proceedings no. 5, which on April 27 ordered the initiation of preliminary proceedings 150/09, that is, paradoxically, of a procedure distinct from that to which the complaint was supposedly bound as "antecedent." Indeed, now in the new case, through an Order on May 26, 2009, it decided to send letters rogatory to authorities of Great Britain and the United States, requesting information on possible investigations in those countries for the alleged tortures and abuse suffered by the aforementioned defendants.

After these events, on September 24, 2009, one of the defendants in the aforementioned Case 25/03 presented a complaint against the same persons mentioned as had been presented by the Association for the Dignity of Male and Female Prisoners of Spain, and also against the president, vice-president, and secretary of defense of the United States, the commander in chief at Guantanamo and the general responsible for interrogations at that internment center at the time of the events.

Transfer to the prosecution office having been approved on September 28, the latter, again attempting to assure compliance with the law in the determination of jurisdiction and judicial competence, asked the court to send the complaint to the Office of Dean to be assigned, and that the procedural representation of the complainant be required to establish whether it had filed the action of justice before the jurisdiction of preference (that of the United States), and whether the latter had chosen not to pursue any investigation.

However, through an order on October 29, of 2009, Central Court for Preliminary Criminal Proceedings no. 5 allowed the complaint to be processed, disregarding the requests from the Office of Public Prosecutor not to rule on most of the questions posed in its report (application of the principle of subsidiarity, determination of the object of the procedure, and the existence of proceedings for the same deeds in other central courts

for preliminary criminal proceedings). Accordingly, the Office of Attorney General on November 13 filed a direct motion of appeal before the Division of Criminal Matters of the National Court, which is pending decision by the full assembly of that court body.

It should be noted, all the foregoing notwithstanding, that the procedures carried out by Central Court for Preliminary Criminal Proceedings no. 5 (statements of those affected, request for reports, etc.) during the investigation phase of preliminary procedures 150/09 have not been questioned or appealed by the Attorney General at any time.

Bearing in mind the identity and status of the former high officials of the United States government, and therefore the well known and obvious legitimate interest – and even possible liability – of the administration of that country in relation to the deeds under investigation, in separate visits of legal representatives of the American embassy to the Office of Prosecution of the National Court, they were told of the procedural position previously adopted by the Office of Public Prosecution in relation to this matter, in the same fashion as often and mutually the offices of attorney general of various states (France, Italy, Great Britain, and other countries) receive and pass on through the channels of legal cooperation commonly used in international relations similar information in relation to the respective actions in procedures that affect matters of significant mutual interest.

Yet as textually and explicitly stated by the Honorable Chief Prosecutor of the office of prosecution of the National Court in his report sent here to the Office of Attorney General, there has been no "*pressure or involvement by them or by third parties in relation to the decisions finally adopted,"* and "*the terms of conversations that are cited fragmentarily in the items published in some media are absolutely untrue,"* and it regards it as "*a subjective and self-interested statement by those who have written such items.*"