



**CENTRAL COURT FOR PRELIMINARY CRIMINAL PROCEEDINGS NO. FIVE  
MADRID**

**PRELIMINARY REPORT, SUMMARY PROCEEDINGS 150/2009**

**RULING**

In Madrid, April 13, 2011.

**FACTS**

**ONE.** - On October 29, 2009 a ruling was issued, in which in the Decision Portion the order was given to:

- *“Admit the complaint filed by **Lahcen Ikassrien** as injured party for torture, against the material authors and any others who turn out to be responsible for the events.*
- *Dismiss the complaint filed against the persons identified, since the acts of which they were accused are not specified.*
- *Repeat the Letters Rogatory sent to the United Kingdom and the United States on June 15, 2009 of which a reminder was sent on October 11, 2009.”*

In response to that ruling, an appeal was filed by the Office of Public Prosecutor, setting in motion appeal proceedings of the Second Division no. 66/2010, taking the matter to the Full Court; in the proceedings is a **notice sent by the Office of the Criminal Division of the National Court, dated April 13, 2011**, stating “that in the appeal proceedings of the second division no. 66/2010, deriving from preliminary report 150/2009 of Central Court for Preliminary Criminal Proceedings no. 5, **on April 6, 2011, a ruling has been issued by the Full Division, dismissing the appeal filed**; the notification is pending presentation of the particular votes given by several of the magistrates of the Full Court.”

**TWO.** - On that same date of October 29, 2009, a ruling was issued by this court, which in the decision portion order was given to:

- *“Deny to Lahcen Ikassrien status as protected witness for now.*
- *Guarantee that Lahcen Ikassrien may remain in Spain as victim-witness of the events, and to that end any measure entailing change of the status of resident which he now enjoys in Spain must be suspended, at least as long as his presence is necessary in this Procedure, and without detriment to other decisions that might be made.*



— *Send an Official Letter to the Ministry of the Interior and to such other bodies as is appropriate, notifying them of this Ruling so that it may be carried out.*

Inasmuch as the Attorney Ms. Echeverría Terroba had requested that the aforementioned Mr. Ikassrien be duly provided documents and that he be granted a residency and work permit, on February 1, 2011, a ruling was issued dismissing the request made, upon first informing the Office of Public Prosecutor of the matter, the content of the October 29, 2009 ruling remaining in effect.

**Three.** - By means of a new brief presented by the Attorney Ms. Echeverría Terroba on behalf of LAHCEN IKASSRIEN, filed February 24, 2011, it is proposed that the Ministry of the Interior be urged to grant Mr. Lahcen Ikassrien residency and work permission in Spain, in accordance with article 45.5 of Royal Decree 2393/2004 (December 20). That request is repeated by a further brief filed on August 8, 2011, referring to the “extremely grave” condition suffered by the petitioner.

The Office of Public Prosecutor has stated in a report filed on March 8, 2011 that “with regard to Lahcen Ikassrien’s petition for residency and work permit the Central Court does not have competency in this matter.”

### LEGAL ARGUMENTS

**ONE.**- With regard to the request for documentation and residency permission for **LAHCEN IKASSRIEN** presented by his court representation in the court records and following the criterion of the Office of Public Prosecutor, by order of this Court issued on February 1, 2011 it was decided that it was not in order, on the grounds that the presence of the victim available for this procedure during the time it is being processed, neutralizing a possible administrative expulsion of him from Spanish territory; it was guaranteed by the ruling issued by this Court on October 29, 2009, since an official letter to that effect had been issued to the Ministry of the Interior which was complied with on November 23, 2009 by the Central Unit against Immigration Rings and Documentary Falsehoods, of the General Commission of Immigration Matters and of the National Police Corps, as recorded on page 1583, and is reflected in the official police statement that **the Moroccan citizen LAHCEN IKASSRIEN does not have permission to reside in Spain.**

In any case, the decision that might fall to the administrative authority with competency in the matter was left aside.

**TWO.**- Upon examination of the unfolding in the court of this procedure, having certified today the dismissal by the full Court of the Criminal Division of the National Court of the appeal filed by the Office of Public Prosecutor against the October 29, 2009 ruling which included allowing into the court of the complaint filed by



the victim LAHCEN IKASSRIEN, the implicit affirmation may be drawn from that court decision that this court is competent to continue to pursue the investigation into the facts that are the object of the procedure, in the sense already specified in the October 29, 2009 ruling itself, as well as the initial processing of the procedures of April 27, 2009, and in the subsequent one of January 27, 2010, by which the competence of Spanish jurisdiction in the case is ratified and various complaints filed by the various *acusaciones populares* are admitted.

That is why even though full notification by the Criminal Division of the National Court is being awaited on the ruling issued by the Full Court on April 6, 2011 on the Appeal Proceedings of the Second Division no. 66/2010, in order to rule on particular proceedings of the investigation procedure presented by the parties involved in the proceedings, as well as those that could be decided or repeated or on the court's own authority, due to the urgency and extreme seriousness set forth in the briefs presented by the party, the new petition filed by the court representation of LAHCEN IKASSRIEN must be taken into consideration, so that his remaining in Spain while his procedure is taking its course be sufficiently backed by the government, in view of the particular circumstances present in the case under examination.

Thus, the aggrieved party bases his request on what is set forth in article 45.5 of Royal Decree 2393/2004 (December 23), enacting the regulations of Organic Law 4/2000 (January 11), on rights and freedoms of foreigners in Spain and their incorporation into society.

Accordingly, article 31.3 of Organic Law 4/2000 states that *“The government may grant authorization for temporary residence for a situation of placement of bond, and for humanitarian reasons, of collaboration with the Ministry of Justice or other exceptional circumstances as determined by regulations. In these circumstances the visa shall not be required.”*

Moreover, article 45 of the aforementioned Regulations (RD 2393/2004) regulates *“Authorizations of temporary residence or exceptional circumstances,”* indicating in section 1 that *“Pursuant to article 31.3 of Organic Law 4/2000 (January 11), in view of the exceptional circumstances that may obtain, a temporary residency authorization may be given to foreigners who are in Spain under the circumstances determined in this article, provided there is no bad faith on the part of the applicant”*; whereas in section 5 it specifies that *“Without detriment to what is stated in the foregoing sections, authorization may be granted to persons who are collaborating with administrative, police, fiscal, or court authorities, or when there are reasons of public interest or national security that justify the need to authorize their residency in Spain. To that end, those authorities may urge the competent bodies to grant authorization of residency or of residency and work to the person who is in one of these circumstances.”* Under such circumstances, the foreigner may personally request the corresponding authorization to work in the registries of the bodies competent to process it, during the period when the authorization of residency for exceptional circumstances is in effect, and with compliance with the requirements set in the Regulations.



Next, article 46.6 of the Regulations establishes that *“Under the conditions mentioned in section 5 of the previous article, competence to resolve it shall fall to:*

- a. The Ministry of Security when the authorization is based on collaboration with police, fiscal, and court authorities and in cases of national security. A petition based on these circumstances shall be accompanied by the report from the corresponding head office of the Security Forces and Corps, of either the national state or the autonomous community, and when such is the case, that of the fiscal or court authority, to establish the reasons justifying it.*
- b. The Ministry of Immigration and Emigration in cases of collaboration with other administrative authorities and for reasons of public interest.*
- c. Under the circumstances of paragraphs a and b, the aforementioned authorities may delegate the powers conferred on the government subdelegates or the government delegates in the single-province autonomous communities. Likewise, in the case of paragraph a) this power may be delegated to the General Director of the Police or to the General Commissioner of Immigration Matters and Documentation.”*

By way of addition to the regulatory qualification on which the aggrieved party bases its claim, ADDITIONAL PROVISION ONE of the Regulations (RD 2393/2004) in section Four states as follows: *“When circumstances of an economic, social, or labor nature made it advisable, and under non-regulated circumstances of special relevance, upon proposal by the Minister of Immigration and Emigration, after first notifying the Minister of Security, the Council of Ministers may issue instructions ordering the granting of authorizations of temporary residency and/or work which may be connected temporally, by sector or territorially in the terms set forth in them. The instructions shall establish the manner, requirements and time periods for establishing such authorizations. Likewise, the Ministry de Immigration and Emigration, upon notifying the Ministry of Security may grant individual authorizations of temporary residency when there exist exceptional circumstances not anticipated in these Regulations.”*

In accordance with repeated precedent from the Division of Administrative Disputes of the National Court – rulings of Division Four on May 13, 2009, May 19 and June 30, 2010, and January 19 and February 2, 2011 - the circumstance mentioned in article 31.3 of Organic Law 4/2000, in relation to article 45.5 of these executive regulations, is not exhausted by what is bound to order or public security, to national security, or the prosecution of crimes. That is corroborated by article 46.6 of the executive Regulations, when it regulates the procedural aspects of that authorization, inasmuch as there is a clear difference on the one hand between the public interest having to do with order or public security, national security, or the pursuit of court cases, specified in “collaboration with police, fiscal and court



authorities” in which it is the Ministry of Security that resolves it (article 46.6 .a), and on the contrary in "cases of collaboration with other administrative authorities and for reasons of public interest" it is the Ministry of Immigration and Emigration that resolves it.

Finally, the STS [Sentence of the Supreme Court], Division Four, (January 8, 2007), confirming the text issued by RD [Royal Decree] 2393/2004 for the circumstance of authorization of residence of an exceptional character established in art. 45.5, notes that “*With regard to the matter that we are examining, the same thing happens as with regard to authorization for humanitarian reasons. The regulations of the law are not exhaustive, and besides the fact that the mandate of article 31.3 of the Organic Law may be applied directly, authorizations of this kind are envisioned in other laws, as in the case in article 94.2 with regard to minors, and in Additional Provision one, number 4.*”

**THREE.-** Applying the foregoing legislative and regulatory provisions to the present situation, with regard to the Moroccan citizen LAHCEN IKASSRIEN, represented as aggrieved in invoking *acusación particular* in this procedure, the material and procedural circumstances to be kept in mind, in connection with sustaining the grounds for the claim being made, have varied in the judgment of this investigating judge. Briefly they currently stand as follows:

**1<sup>a</sup>.-** It is established in the court records how LAHCEN IKASSRIEN, a Moroccan citizen, residing in Spain for thirteen years and having NIE X01347570, was detained in November 2001 in Afghanistan and transferred from Kandahar to the military base at Guantanamo (Cuba) on February 2, 2002 by United States military forces. He remained there until he was transferred to Spain on July 18, 2005 to be investigated, charged, and placed on trial, having been previously called for in extradition by this Central Court for Preliminary Criminal Proceedings No 5, Under Case 25/03, for the alleged crime of terrorism. Finally, LAHCEN IKASSRIEN was tried and acquitted by the Criminal Division of the National Court, Division Four, in a decision on October 10, 2006, which became final.

**2<sup>a</sup>.-** While initially the procedural cautionary measure was taken with regard to the complainant LAHCEN IKASSRIEN consisting in assuring his stay in Spanish territory, as victim-witness of the acts under accusation, with the suspension of any action aimed at expelling him from Spain and guaranteeing his “resident status” (so it was ordered by the ruling on October 29, 2009, the date when the complaint filed by Lahcen Ikassrien, as aggrieved, was filed, for torture against the material authors, and any others that might be responsible for the deeds), nevertheless it is clearly established in the court records that the aforementioned aggrieved party in this case does not have authorization for residency in Spain nor does he have documentation or and administrative file regulating the legality of his stay on Spanish soil.



3<sup>a</sup>.- Based on the recent ruling issued in the Full Court of the Criminal Division, Appeal Procedure 66/2010 of the Second Division, dismissing the appeal filed by the Office of Public Prosecutor against the ruling on October 29, 2009 allowing the complaint filed by LAHCEN IKASSRIEN to be heard, his condition as aggrieved and is valid standing as *acusador particular* in these proceedings is confirmed, and hence it should be strengthened all the more if the guarantee of presence and subjection of the complainant to the results of the procedure is in order, inasmuch as he stands // as direct victim and qualified witness of the deeds that are the object of various complaints already admitted into court proceeding, and his remaining on Spanish soil is essential for the purpose of this preliminary investigation.

For the reasons set forth, this investigative judge believes that bearing in mind the particular and exceptional circumstances present in the case under examination, with regard to the **seriousness of the alleged crimes of which the complainant is said to have been victim** (along these lines, the Ruling of the Supreme Court of Justice (presented by his Honor Judge Jimenez Garcia) must be kept in mind, absolving Ahmed Abderraman Ahmed – also aggrieved in these procedures. In F.J. Five it reads “*The detention of hundreds of people, including the complainant, without charges, without guarantees, and therefore without control and without limit, at the Guantanamo base guarded by the United States Army constitutes a situation impossible to explain let alone justify from the legal and political situation in which it is set. It could indeed be said that Guantanamo is a true “limbo” in the legal community, which is defined by numerous treaties and conventions signed by the international community, constituting a thorough example of what some scholarly doctrine has called the “Criminal Law of the “Enemy”*”), as well as the **situation of extreme frailty in which living conditions are currently unfolding in our country** – expressed in writing by his court representative, signed by the aggrieved party in the statement given to this Court on February 15, 2010 – not being able to obtain a work permit, lawful means of life, or any health service, in view of the uncertain situation suffered by LAHCEN IKASSRIEN with regard to his administrative situation in Spain upon being placed in liberty as a result of being acquitted by the Spanish courts, the petition made by the court representation of the complainant must be accepted. This court must send the proper notices to the Ministry of Security and the Ministry of Immigration and Emigration, in application of the provisions of arts. 33.3 of Organic Law 4/2000, and 45.5, 46.6 and Additional Provision One, section Four of Royal Decree RD 2393/2004, so that the competent authority may assess the suitability of granting to the Moroccan citizen LAHCEN IKASSRIEN authorization of temporary residency, so as to cover the guarantees and purposes stated in this ruling, a copy of which shall be attached, along with the particular matters entailed in the case, and that are of concern in this regard.

Upon examination of the legal provisions set forth, and others of general application,



**I DECIDE**

**TO ADMIT** the petition made by Attorney Ms. Echeverría Terroba on behalf of **LAHCEN IKASSRIEN**, accordingly ordering that timely notices be sent to the Ministry of Security and to the Ministry of Immigration and Emigration, in application of what is set forth in articles 33.3 of Organic Law 4/2000, and 45.5, 46.6 and Additional Provision One, section Four of Royal Decree 2393/2004, so that the competent authority may evaluate the appropriateness of granting the Moroccan citizen **LAHCEN IKASSRIEN** authorization of temporary residence – and if appropriate, of work - in Spain by way of exception, in order to meet the guarantees and purposes set forth in this ruling, a copy of which shall be attached, along with the details of the case and that are relevant in this regard.

Let notice be given to the Office of Public Prosecutor and the parties with standing.

A motion for **AMENDMENT/APPEAL** may be filed before this Court within a period of **THREE/FIVE** days.

Thus decided, ordered, and signed by His Honor, **PABLO RAFAEL RUZ GUTIERREZ**, **MAGISTRATE-JUDGE** of Central Court for Preliminary Criminal Proceeding No. 5 of the National Court. In witness whereof.

**PROCEDURE.** What is ordered is carried out at once. In witness whereof.