



JUZGADO CENTRAL DE INSTRUCCIÓN No.4

[Translator's note: National Pre-Trial Examining Court No.4]

AUDIENCIA NACIONAL [National Court] Madrid

SUMARIO* No. 3/2008-D

*[Translator's note: Spanish internal procedural classification:

Decision of pre-trial phase judge in proceedings related to most serious criminal offences]

DECISION

CÒPIA

In Madrid, on the twenty-first of January, two thousand and eight

STATEMENT OF FACTS

SOLE ARTICLE: The present Preliminary Proceedings No. 55/2005-D were commenced in this *Juzgado Central de Instrucción* No.4 of the *Audiencia Nacional* pursuant to the lawsuit filed by Procurator Mr. Jose Luis Ferrer Recuero on behalf of and representing Mr. Josep Vallmajó i Sala and at least 30 additional plaintiffs against Colonel Charles Musitu and at least 40 additional defendants.

The criminal offences filed in the complaint present a wide catalogue of criminal activities, as follows: allegedly, a heavily armed and organized political-military group, trained and equipped by foreign powers, started its criminal activities on October 1, 1990 in Uganda, from where it departed towards Rwanda. The group undertook a series of different, organized and systematic practices towards the extermination of the civil population both by initiating war hostilities openly and by organizing terrorist acts of varying magnitude which were perpetrated primarily in the northern part of Rwanda. These acts were carried out under a stable, structured, and strongly hierarchical command which was strategically organized, and which later went on to seize power by armed force and through the latter, arrogated itself an official state role, establishing a reign of terror and setting up an organized structure of crime alongside the State. In this role, it set out to perpetrate acts of abduction, torture, terrorist attacks, imprisonment, selective assassination, destruction and different forms of elimination of corpses, indiscriminate attacks on the civil population through armed action carried out openly in their own country (Rwanda) as implemented in the neighboring country, at the time Zaire which is now the Democratic Republic of Congo.

Among the acts mentioned above, nine Spanish nationals suffered violent death, thus allowing to characterize the acts carried out until May 24, 1996 as alleged crimes of terrorism, torture and genocide; the acts carried out since May 24, 1996 as crimes of terrorism, crime against protected people and property in the context of armed conflict, crime of torture, crime of genocide and crime against humanity; and furthermore in accordance with the Military Criminal Code all of them could constitute a crime against War Laws and Practices.

LEGAL REASONING

SOLE REASONING: The acts mentioned above can constitute a crime, hence, pursuant to the provisions set forth by Article 300 and equivalent provisions in the Code of Criminal Procedures, the decision calls to open the *Sumario* proceedings in timely manner in order to clarify the aforementioned acts and find out the people responsible for them.

ORDER OF THE COURT

HIS HONOR RULES: to open *Sumario* proceedings for the crime of genocide, to be entered in the corresponding Registry, informing His Excellencies Mssrs. President and State Prosecutor of the Audiencia Nacional of this decision, and to carry out the following procedural action:

Serve notice to the State Prosecutor's Office about all prior proceedings and documents/ evidence to date as well as about the petition presented by the legal counsel representing the plaintiffs, as appearing in Pages 2563 to 2620, in order for him to advise and/or urge following steps, according to his legal competence.-

This decision is not final and an appeal for revision can be lodged against it in this Court, to be done within a period of three days from notification.

The Hon. Mr. Fernando ANDREU MERELLES, Judge of the *Juzgado Central de Instrucción* No. 4 of the *Audiencia Nacional* with seat in Madrid, so resolves, orders and signs. I certify.

EXECUTION: What has been decided is hereupon fulfilled; I certify.