



Press release 04.03.2019

Assessments of Trial 1-0 (Week 3)

International Trial Watch attended the hearing sessions held in the third week and 7 observers were present, as follows:

- Jelle Klaas, criminal defence lawyer and litigation director for the NJCM (Dutch Section of the International Commission of Jurist). Holland.
- Susanna Marietti, National Coordinator of the Association "Antigone", an association active in Italy for more than twenty years in defence of the rights and guarantees in the criminal and penitentiary system. Italy.
- Patrizio Gonnella, Chairman of the Italian association Antigone (since 2005) and also Chairman of Coalizione Italiana per li Libertà i Diritti Civili (since 2004). Italy.
- Mathieu Crettenand, Doctor in Communication and Media Science by the University of Geneva and expert in self-determination processes. Switzerland.
- Iñaki Lasagabaster, criminal defence lawyer and member of Syndicat des Avocats de France (France Lawyers Trade Union) and Avocats Européens Démocrates (European Democratic Lawyers). France.
- Clara Dujardin, criminal defence lawyer and member of Syndicat des Avocats de France (France Lawyers Trade Union) and Avocats Européens Démocrates (European Democratic Lawyers). France.
- Cecile Brandelli, criminal defence lawyer and member of Syndicat des Avocats de France (France Lawyers Trade Union) and Avocats Européens Démocrates (European Democratic Lawyers). France.

Assessments:

- The Platform positively values the fact that the Supreme Court has scheduled an additional day per week for some of the coming weeks. We do hope this additional day will serve the purpose of covering as many witnesses as possible in the daily sessions, thus reducing the time in the court hearing room for the defendants. Defence lawyers have complained that a packed schedule has compelled the defendants to stay in the hearing room for more than 12h which has resulted in extreme tiredness, late transfers to prison and reduced time for defence daily preparations.
- Nonetheless, we noticed that:
 - Treatment in the course of examinations of the freedom of expression and the right to meet and

demonstrate (20, 21 CE / 10, 11 CEDH):

Questions raised by the prosecution point at a criminalization of the practical exercise of the right to demonstrate. This fact was particularly observed in Mr. Cuixart's deposition, as well as in the witness examinations of Mr. Rajoy, Ms. Sáenz de Santamaría and Mr. Zoido. Mr. Cuixart's examinations was loaded with questions about his role in calling a demonstration where the only proven incident was material damages in police vehicles. He was examined about his statements in situ and in twitter where he was asking the demonstrators to maintain a peaceful, calm and festive attitude.

The Platform considers that this type of accusations and line of questioning do not encourage the exercise of fundamental rights, such as the right to expression or demonstration, since in the exercise of the right to demonstrate it is not possible to predict conclusively whether violent episodes will occur, and even less so to blame those calling the demonstration for such episodes. Particular care is to be given when tackling facts covered by criminal law and the exercise of fundamental rights and we would like to refer for this purpose to the Court of Strasbourg case law and what it is therein referred to as *Chilling Effect*.

Public prosecution and private prosecution are requesting lengthy prison penalties in their prosecution statements; but let us remember that in accordance with their writs, the prosecution bears the burden of proof of facts on which their claims are based.

- o Limiting witness examinations to documentary evidence existing in the proceedings can have an impact on the principle of equality of arms and the right of defence (6 CDEH/ 24 CE).

A potential change in the court approach is observed in the witness examinations phase, in terms of exhibiting only documentary evidence existing in the proceedings and thus being more restrictive than during the defendants depositions.

Showing a video or exhibiting a document, in order to confirm its weight in terms of evidence, is very frequently necessary when it comes to examining a witness about its contents and context. The Court is requiring heavy weight arguments in order to justify the relevance of showing a video or exhibiting a document. Witness examinations may become exonerating evidence for the defence and therefore the same degree of flexibility should prevail in showing documents to be submitted to both defence and prosecution. Otherwise a substantial restriction in this regards may impinge on the principle of equality of arms and the right to a fair trial, as well as the right to defence.

Existing documentary evidence in these proceedings is very vast and the trial may become considerably longer than anticipated; but the right to a speedy trial cannot be invoked in detriment of the right of defence and, even less so, when prosecutors are requesting very lengthy prison penalties for the defendants.

- o Schedule, order of witness examinations and the right of defence (24 CE and 6 CEDH)

As of today, there is no clear global schedule yet with regard to the court sessions. Schedule is advised on a week per week immediate basis, thus limiting defence counsels in their defence strategy in accordance with a predetermined schedule.

In this respect and with regard to taking of evidence, article 701 LECRIM (Criminal Procedural Act) sets out that prosecution witnesses should come first and defence witnesses afterwards. Prosecution witnesses evidence taking is part of the right of defence and thus it is essential to hear all prosecution witnesses in full, for the *audit alteram partem* principle to be enforced.

The Court may exceptionally change the order in the witnesses' deposition by means of a well grounded court writ and so far, only a clerk's order has been used for this purpose. This week, high ranking politicians have deposed, whether or not they had been called by defence counsels. As of next week prosecution witnesses examination will resume.

Observers for this week:

- Gustavo Palmieri, lawyer and member of the Executive Committee at the Centre for Legal and Social studies and Director of the Centre for Justice and Human Rights "*Eduardo Luis Duhalde*" at the University of Lanús, Argentina.
- Mónica Aranda, Associate Professor in Criminal Law at the University of Barcelona.
- Jorge Correcher Mira, Assistant Professor in Criminal Law Department, University of Valencia and Collaborating Professor at Open University of Catalonia.
- Hadi Cin, lawyer and member of European Democratic Lawyers, Turkey.

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