



## Press release 11.03.2019

### Assessments of Trial 1-0 (Week 4)

International Trial Watch attended the hearing sessions held in the third week and 4 observers were present, as follows:

- Professor Mónica Aranda Ocaña (Criminal Law Professor) University of Barcelona.
- Professor Jorge Correcher (Criminal Law Professor) University of Valencia.
- Professor Gustavo Palmieri (Centre of Legal and Social Studies) Republic of Argentina.
- Hadi Cin, Lawyer and member of the Executive Committee of Contemporary Association of Lawyers (an organization member of European Democratic Lawyers)

#### Assessments:

- The Platform positively values:
  1. Chief Justice attempts to conduct the examinations in an orderly fashion.
  2. Chief Justice providing ample time for witnesses' examinations, though long lasting court sessions, in particular on Monday 4th and on Tuesday 5th (more than 10 and a half hours in court) entailed extremely long, tiring days and this matter will be further discussed down below.
  3. Chief Justice tries to prevent the parties from raising questions which *per se* lead on to specific answers.
- Nonetheless, we noticed that:
  1. Chief Justice repeatedly interrupts defense counsels in their examinations of witnesses and, in particular, when they point out contradictions, or when they are trying to compare witnesses' depositions with documentary evidence existing in the proceedings, prior witnesses' depositions, data published in the media, other witnesses' statements or audio-visual material. Witnesses' credibility cannot be established with rigor if counsels are not given the

possibility to tally their depositions with prior answers given to other questions, through exhibition of documents or video material, in other words to enforce the *audit alteram partem* principle intrinsically inherent to criminal justice. This happens in particular when the issue of police violence against voters in the 1-0 referendum is brought up. In addition, this fact may jeopardize the right to defense, equality of arms and at the end of the day, the right to a fair trial, provided for in article 6 in the European Convention on Human Rights.

2. On a number of occasions, Chief Justice refused some of the parties and in particular, defense counsels, the possibility to examine or cross-examine witnesses proposed by another party on facts included in the defendants' indictment.
3. This manner of conducting the trial which impinges on the possibility to establish some witnesses' credibility and leaves the examinations in the free hands of Chief Justice is allowing, amongst other things, the trivialization of police violence deployed on October 1st 2017.
4. It is particularly striking that so many questions have been allowed on parliamentary law and the functioning of Catalan Parliament (such as how legislative proposals are admitted, or how the day's agenda is established). This fact is not only potentially jeopardizing the principle of parliamentary immunity, but it also reveals the fundamentally political nature of this trial, where long political debates are entertained, well beyond purely and merely legal and criminal aspects, and the exercise of fundamental rights.
5. It continues to be particularly concerning communication between witnesses who are able to, either view or learn about other witnesses' depositions and their statements made in court sessions. This was specifically noticeable this week when police officers depose following a hierarchical order, from high ranking officers to lower ranking officers, and their respective depositions were adjusted accordingly in view of their superiors' prior depositions, thus their accusations were doubtfully spontaneous, as it would be mandatory in the case law according to Criminal Procedural Act.
6. Likewise, it is specially concerning to assist to the controversy brought about on a couple of occasions by the way Chief Justice handled, in the past week, general compulsory questions to be asked before any depositions. The first occasion this happened was during Mr. Pérez de los Cobos examination. Chief Justice forgot to ask him on day 1 of his examination whether he had ever been prosecuted. He asked him on the second day of his examination and the witness had to acknowledge that he had indeed been prosecuted before. The second time this happened was on the occasion of Mr. Trapote's deposition. He said he had no previous criminal liability and the next day the press

disclosed that back in 1974 he shot somebody on the back and the person subsequently died. None of those facts were disclosed during the general compulsory questions prior to this witness deposition. The Court's evaluation of the witness silence on this regard remains to be seen.

7. Finally and on another front, it is equally concerning to observe the defendants extreme fatigue signs, day after day and in particular as of 19h or 20h. The Platform has had the opportunity to talk to some of the defendants and they have indicated that after court sessions, another hour and a half is required for them to reach the penitentiary centre. Upon their arrival, dinner is served at the canteen and only a few hours rest are provided since they need to get up at 6 am to get ready for the next court session. Accumulated fatigue day after day may entail substantial undermining of their capacity to follow up the trial and to prepare appropriately their defense with their respective defense counsels

#### **Observers for this week:**

- Ralph J. Bunche, Secretary General of Unrepresented Nations and People Organization (UNPO), Belgium.
- Hannibal Uwaifo, Managing Partner at the African Bar Association, Malawi.
- Ricardo Juan Sánchez, Associate Professor in Procedural Law at the University of Valencia.

#### **Contact people**

Iñaki Rivera - spokesperson in Barcelona – 669583829

Mercè Barcelo- spokesperson in Madrid- 666336732

Alba Ortega- Head of Communication in Barcelona- 634186509

Serlinda Vigara – Head of Communication in Madrid - 628914789