



Press release 18.03.2019

Assessments of Trial 1-0 (Week 5)

International Trial Watch attended the hearing sessions held in the fifth week and 3 observers were present, as follows:

- 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.

Assessments:

- The Platform positively values:
 1. Chief Justice has been flexible in conducting the examinations of people not residing in Spain and he has allowed to postpone their examinations to the following week. He has also allowed for witnesses who are prosecuted in other proceedings to enforce their right not to depose and thus not to travel to Madrid; therefore exempting them from deposing before the Supreme Court and in this regard, submitting writings of waiver.
 2. Chief Justice has continued to limit the scope of questions raised when the person asking the questions includes in the wordings conclusive assessments, potentially leading the witness in his/her responses.
- Nonetheless, we noticed that:
 1. The Platform has already pointed out in previous press releases that Chief Justice is repeatedly interrupting defense counsels in their examinations and cross-examinations of witnesses proposed by other parties on issues not dealt with before. This is a limitation that is not provided for by the law. In this regard, most negative consequences have occurred such as when a defense counsel protested to the fact that Public Prosecutor should not cross-examine along those lines and then Chief Justice himself asked the witness

the question (Mr. Trapero). This way to proceed could be an indication of the lack of objective impartiality on the part of the Court (according to European Court for Human Rights - CEDH, article 6)

2. Court sessions have not been adequately balanced in terms of scheduling: some sessions have lasted up to ten hours and others, hardly twenty minutes. In addition, the order established for witness examinations does not allow to focus on examining the different crimes in the indictment in an orderly fashion, which could, in turn, impinge on the right of defense.
3. This unbalanced schedule is partly due to the fact that two of the Court Justices are also members of the Central Election Commission. Such magistrates had to attend a commission meeting during which Catalan institutions were forbidden to show yellow bows on their façades (Resolution 55/2019 dated March 11th), so Chief Justice had to suspend the session. This fact underlines how some of the non jurisdictional functions held by some members of the Court - which could have been perfectly waived- are interfering with good session scheduling. On the other hand, no mention is made in Resolution 55/2019 about these two magistrates having abstained from voting in such resolution. Once again, this could be interpreted as an indication of the lack of objective impartiality of the Court.
4. The right of defense could also be affected, from equality of arms point of view, since new evidence has come up, possibly from Court number 13 in Barcelona, much to defense counsels' surprise because, apparently only Public Prosecution was aware of it so far.
5. This week, Public Prosecution has been asking some of the witnesses about their affiliation to a given association. Protests raised by defense counsels have not been admitted by Chief Justice, as opposed to what happened last week when one of the witnesses was asked by one of the defense counsels whether she visited some web pages. This different approach on the part of Chief Justice between defense counsels and the prosecution with regard to questions related to the witnesses ideological bias (thus undermining witness' credibility) could also be an indication of the lack of objective impartiality of the Court.
6. Chief Justice has reproached some of the witnesses their memory gaps when a high number of questions remain unanswered. But he did not do so to all witnesses equally. And he only warned one of them about false testimony given in a court room and the criminal consequences thereof, despite the fact that this had occurred repeatedly (e.g. Mr. Rajoy and Mr. Zoido and Ms. Sáenz. In addition, when Chief Justice warns a witness about repetitive memory gaps and his/her failing to respond, such reproach could impinge on that witness deposition.

7. Those people summoned in this trial as witnesses who are in addition prosecuted in another proceedings are thus protected vis-a-vis their right not to depose against themselves (article 24.2 Spanish Constitution). Therefore, they are entitled to decline deposing and thus exempted from telling the truth. Thus, the fact that Chief Justice compels them to swear or affirm to tell the truth, not only is not provided by law, but it could indeed constrain their depositions.
8. The circumstance that the facts examined in this trial court are covered under three different proceedings (i.e. Supreme Court, National High Court [*Audiencia Nacional*] and Court number 13 of Barcelona) means that some people who should be appearing in this trial as defendants, are only appearing as witnesses. This fact distorts and modifies depositions schedule (it was particularly obvious in the case of Catalan Police Chief, *Mayor* Trapero, who in his condition as defendant would have deposed before, say for instance, Mr. De los Cobos and it does also impinge on defense counsels strategy who are limited and constrained to cross-examined only on issues brought up the other parties - as it has already been mentioned) and all of this, at the end of the day, has a heavy impact on the possibility to clarify the facts.

In addition, all of this points directly in the direction of a false starting premise: it is questionable that in this case, the Supreme Court should be the court of justice predetermined by law (article 24.2 Spanish Constitution)

9. On Friday 15th, at the end of court sessions, some defense counsels have submitted a written allegation complaining about the breach of their right of defense based on facts already pointed out by ITW in this press release, i.e. the Court is constraining their examinations as indicated above (see section 1), as well as on the possibility to exhibit the witnesses video footage existing in the proceedings. The latter would be particularly relevant next week when some police officers who were acting members in operations carried out by the police and which are the basis for prosecution's indictment. The Platform would like to insist on the fact that the court cannot invoke a speedy trial concept in detriment of a right of defense and, even less so, bearing in mind heavy prison sentences asked for defendants by the prosecution

Observers for this week:

- * Ernesto Moreau, Vice Chairman of the American Jurists Association, Argentina.
- * Alejandro Forero, Professor in Criminal Law at the University of Barcelona.

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