



Press release 25.02.2019

Assessments of Trial 1-0 (Week 2)

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

follows:

- John Philpot, pioneer in International Criminal Law. He acted at the International Criminal court in The Hague (ICC) in the Kenya file and at the International Criminal Court for Rwanda.
- Paul Newman, Doctor of Philosophy on 'Internal Displacement and Human Rights situation in Northern Sri Lanka' from Bangalore University. He was one of the four public speakers at the Permanent People's Tribunal on War Crimes against Sri Lanka.
- Bill Bowring, Professor at the University of Birbeck, member of the European Association Lawyers for Democracy & World Human Rights and also member of the Executive Committee for Human Rights at the England and Wales Bar Association.
- Joaquín Urías, University Professor holds a chair in Constitutional Law and he is a former counsel for the Constitutional Court.

Assessments:

- The Supreme Court did not provide any seating space for observers. This circumstance makes observation extremely complicated and attendance of the observers too, since they have to attend as public in an ordinary hearing. This entails standing in a queue since the early hours in the morning to manage to be allocated a number in the queue and thus be allowed to enter the courtroom. Doors open to the public between 7 and 8 am (no fixed schedule). Once inside the building, all electronic devices have to be handed in and thus people wait for an average of 2 to 3h prior to the actual hearing, in a corridor with limited mobility for security reasons. Not all people attending the hearing have limited access to their cell phones and only the "ordinary" citizens do when they enter the courtroom as public. Thus such a limitation to cell phone access may be random and unnecessary.

- The Platform positively values the following aspects about court sessions held so far: 1) The Court has allowed the defendants to seat next to their respective Counsels once their examination is over (although apparently they cannot do so before they are examined); 2) the Court has granted unlimited time to the defendants in their depositions, allowing them to express themselves freely and at length.
- Nonetheless, we noticed that:
 - On the second day of the trial, the defendants were in court since, approximately 8 am in the morning until 22h30 when the examination was over. They arrived in prison at around midnight and at that time no hot dinner was available nor the possibility to take a shower; all of this bearing in mind that they needed to get up the next day at 6 am to go back to court. Some Defence Counsels protested about the fact that the defendants had to be examined in such circumstances because all of the above was potentially undermining their full capacity to attend the hearing and respond in cross-examination for several hours.
 - No simultaneous interpreting from Catalan into Spanish was provided, only consecutive interpreting. All defendants waived such system because in their opinion this method kills spontaneity and the natural question-answer flow. This situation has in practice entailed their waiving to the use of their mother tongue, which most of them firmly express their protest about since they considered this infringes upon their right to equal footing and thus undermines their defence, as well as their linguistic rights.
 - Public Prosecutors incurred into a series of inaccuracies and made some **potentially leading and tricky** questions. Particular attention is drawn to Mr. Josep Rull's examination during which mention was made to given expressions not existing in a specific document (acknowledging the confusion later on) or to Ms. Dolors Bassa's examination whom was asked about an alleged e-mail not included in the proceedings. In addition, it is rather worrying the fact that the contents of the case proceedings have not been translated into Spanish from Catalan which has brought about some confusions, like the one occurred when Public Prosecutor misinterpreted one of Ms. Bassa's tweets.
 - As far as the hard core of fundamental rights, such as freedom of assembly, is concerned questions raised by Public Prosecutor and State Attorney were particularly worrying. Concepts like communication of demonstrations and/or concentrations were mistaken with an alleged authorization or permission (not at all constitutional), and calling for participation in peaceful mass demonstrations was penalized. Likewise, there was a total lack of knowledge shown on their part with regard to the concept of "spontaneous demonstrations", indeed acknowledged and covered for in international law

which becomes Spanish internal law. Thus, prosecution is inverting the constitutionally enforceable interpreting order when fundamental rights are at stake.

- A full schedule of the trial has not been conveyed to the parties, nor even the order to follow for witnesses' depositions which makes very difficult indeed preparing for examinations and depositions. So far, only the order for next week has been informed and this could potentially have an impact on the right to defence and the banning of lack of proper defence.
- Modification of the agreed order for witness depositions, as provided for in art. 701 in Act governing Criminal Procedure (LECRIM): the order for evidence taking proposed by the Public Prosecution has not been respected and the governing rule has been whether or not the witness has held a political position, regardless of the party proposing his/her deposition. Some Defence Counsels have requested that the 6 witnesses proposed by the Defence, i.e. Ms. Núria de Gispert Català, Mr. Gabriel Rufián, Mr. Albano Dante Fachín, Mr. Iñigo Urkullu Rentería, Mr. Ernest Benach i Pascual and Mr. Juan Ignacio Zoido Álvarez, should depose after the prosecution's witnesses have been heard, in order to guarantee the defendants' right to defence. In the courtroom, the Chief Justice confirmed that such request would be seen to, but in the order issued by the Court Clerk on February 22nd, the above mentioned witnesses are still scheduled for next week.

Observers for this week:

- Jelle Klaas, criminal defence lawyer and litigation director at NJCM (Dutch Section of the International Commissions of Jurists).
- Patrizio Gonnella, Chairman of the Association Antígone (since 2005) and Coalizione Italiana per le Libertà e i Diritti civili (since 2014)
- Susanna Marietti, Antígone National Coordinator. Antígone has been fighting for the rights and guarantees in the criminal and prison systems for more than twenty years.
- Mathieu Crettenand, Deputy Rector at the University of Geneva and Doctor in Communication and Media Sciences.
- Iñaki Lasagabaster, Professor in Administrative Law at Basque Country University.

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