



Press release 15.04.2019

Assessments of Trial 1-0 (Week 9)

International Trial Watch attended the hearing sessions held in the ninth week (three morning and afternoon sessions) and 6 observers were present, as follows:

- Andrea Menapace, Executive Director of Coalition for Civil Liberties and Rights (CILD); Founder and Chairman of Diritto de Sapere (Right to Know), Italy.
- Flaminia Delle Cese, Legal Advisor to Coalition for Civil Liberties and Rights (CILD), Italy.
- Antonio Angelelli, Chairman of the NPO "Progetto Diritti" (Rights Project), Expert in International Criminal Law and Immigration Law, Italy.
- Arturo Salerno, Co-founder and member of the Board in the NPO "Progetto Diritti" (Rights Project), Co-founder of the Association Antigone and the Multimedia Institute for Human Rights, Italy.
- Guillermo Portilla, Professor of Criminal Law at the University of Jaén.
- Ignacio Benítez, Professor of Criminal Law at the University of Jaén.

Assessments:

From the very beginning of this trial, International Trial Watch has positively valued the fact that the defendants are allowed to sit next to their respective counsels. Naturally defence counsels are law experts but the defendants have direct valuable knowledge of the facts being prosecuted in this trial.

- Nonetheless, we noticed that:
1. Chief Justice is maintaining his banning with regard to direct comparison of witness depositions with video images, or with exhibition of procedural documents, thus potentially compromising article 6.3.d. European Convention on Human Rights, as the Platform pointed out on previous weeks. This limitation is particularly concerning in this week's depositions when the acting police forces on October 1st are repeatedly denying a disproportionate use of the force with regard to people's attitude in the gatherings. The fact that no direct comparison can be established between their depositions and the video footage recorded on those days prevents highlighting any potential contradiction and thus, it impinges directly on any assessment the Court may make about the evidence. In addition, this situation makes the task of defence counsels extremely complicated in trying to question witnesses credibility. Although Chief Justice in his responses to defence counsels protesting is insisting that the video footage will indeed be viewed at a later stage of the trial; the fact is that by delaying such viewing the evidence weight of such videos at that time will definitely be undermined, since they will be totally removed from the context -in terms of space and time- described by the witnesses.

This circumstance should be taken into account by the Court because, from a constitutional point of view and the principle of guaranteeing the rights best efficacy, when confronted with two possible interpretations about the exercise of fundamental rights, the person interpreting such two possibilities is compelled to favour the interpretation supporting the fullest exercise of such rights otherwise incurring into a breach, in this particular instance, of the right of defence.

2. Some concepts and descriptions have been insistently repeated by police officer deposing as witnesses. Words such as "hostility", "fear", "mass", "turmoil", "active resistance", "subversive resistance" or "human barricades" have persistently being heard in the courtroom and, though they may be subjective assessments totally unrelated as such to the defendants and the charges in the trial, they aim at artificially constructing -through insistence, repetition and similarity- a violence discourse and on the other hand, they denote a very restrictive conception of the constitutional exercise of the right to meet, shared by the police officers deposing and by the prosecution.

In this regard, it is to be particularly noted Chief Justice refusal to accept questions related to whether the citizens gathered at the polling stations were legitimately exercising their fundamental rights. Thus, it could be inferred that the Court is more prone to listen only to the narration of violent episodes alleged by the Prosecution and confirmed by police officers.

3. Despite the above indicated statements and in the light of evidence so far contributed to the trial, there is a clear lack of proportionality between such evidence and charges put forward by prosecutors.
4. Some negative aspects pointed out in previous weeks within the framework of a fair trial (CEDH Article 6), persist as follows:
 - a) Guarantees to keep witnesses isolated from one another is totally non existing in this trial and therefore all witnesses hear and watch prior witnesses' depositions. This circumstance makes the task of defence counsels more complicated and Chief Justice should acknowledge this fact and try to compensate for it, somehow, lifting for instance some of the bans imposed on the examinations procedure, such as the ban on direct comparison of depositions heard in the courtroom and video footage, in order to check witness credibility.
 - b) The parties continue to be unaware of the full trial schedule and not even of the order for witness depositions, which makes it extremely difficult for counsels to prepare examinations of witnesses and therefore undermining the right to defence. Some of the defence witnesses have deposed before prosecution witnesses and the Court has not alleged any particular reason for such changes which entail amending the Criminal Procedure Act provisions, that is to say, defence witnesses should be heard after prosecution witnesses.
 - c) Last but not least, the parties are totally unaware of the criterion applied in appointing the members of this Court of Justice and this circumstance, coupled with the issue of the objective competence of the Supreme Court itself to hear these facts, could potentially breach the right to a previously determined judge provided by law. It should not be ignored the fact that this court has been appointed *ad hoc* for this trial and there shall be no right of appeal against their judgement.

Observers for this week:

- Daniel Turp, President of the Research Institute on Self-Determination of Peoples and National Independence (IRAI is its French acronym), Canada /Quebec.
- Stéfanie Tougas, Vice president of the Research Institute on Self-Determination of Peoples and National Independence (IRAI is its French acronym), Canada /Quebec
- Anthony Beauséjour, Member of the Board of the Research Institute on Self-Determination of Peoples and National Independence (IRAI is its French acronym), Canada /Quebec

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