



Press release 25.03.2019

Assessments of Trial 1-0 (Week 6)

International Trial Watch attended the hearing sessions held in the sixth week and 2 observers were present, as follows:

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

Assessments:

- The Platform positively values:
 1. Once again, this week 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. This has been the case on several occasions when witnesses are deposing in their capacity as precisely that, people who witnessed the facts and not as experts
- Nonetheless, we noticed that:
 1. The Platform has already pointed out in previous press releases that Chief Justice is repeatedly not allowing 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, since it is neither possible to check the witness credibility nor to raise doubts about it. Therefore the *audi alteram partem* principle and the right to defence are both jeopardized. This absence of direct comparison was particularly relevant during the three sessions the court held this week, mostly focusing on judicial inspections carried out on September 19th and 20th and the 1-O Referendum. Allowing for a direct comparison would permit signalling of false testimony, like defence attorneys pointed out, for instance, in the case of the answers given by the Civil Guard officer holding professional id card (TIP) number K47019K.
 2. Along this week sessions, some of the Public Prosecution examinations have been well beyond the scope of the proposed evidence. Defence counsels signalled the initial lack of a clear scope

in the evidence proposed for some of the witness examinations. In response to this matter, Chief Justice alleged that when proposed evidence was admitted on February 1st, the description of such evidence was a mere summary which could not possibly contain full details of each and every witness testimony. He invited defence counsels to take advantage of their cross-examination time. However, this lack of information may prevent defence counsels from preparing their cross-examinations properly.

3. Chief Justice persists on his determination not to allow the party not proposing the witness to exceed the scope of questions raised by the proposing party when cross-examining such witness. The Platform already mentioned on previous press releases that this could be in detriment of the principle of equality of arms, which in turn could result along the procedure in materially inadequate defence.
4. Public Prosecution has been again raising leading questions. During the examinations of a number of Civil Guard officers, the language used was meant to infer conclusive evidence of violence, which remains to be proven during the documentary evidence part of the procedure. A good example of such practice was the examination on March 19th of Civil Guard officer holding TIP 25979V. Public Prosecutor inferred in the wording of his questions that *“there were new episodes of violence on 1-O”* and yet, no conclusive evidence exists so far in previous examination as to whether there was indeed violence on September 20th.
5. There is a prevailing concern about how some facts which are an expression of fundamental rights, such as the right to meet or the right to demonstrate, are being dealt with, as well as the criminalization of some ideology aspects. This has been a recurring fact in the way that Public Prosecution is examining and leading witnesses in their answers, trying to infer that meeting and shouting, singing or disapproving of police actions, could be indeed existing evidence of sedition. We must not forget that accepting that type of legal approach as something natural could entail consequences further than the trial itself; i.e. the so called *“chilling effect”*.
6. As the Platform already indicated in previous press releases and pointed out last week, the same facts are been heard and dealt with by three different courts, and this could entail inferring some actions and/or statements which could, in turn, have an impact on those summoned witnesses who decided to exercise their right not to depose against themselves. References made during court session on March 19th to Ms. Núria Llorach (investigated by Magistrates Court number 13 of Barcelona) are good proof of such fact.
7. The first court session last week was very long, so much so that defendants remained in the court room for more than 12 hours. This long court sessions are extremely tiring for them, bearing in mind time required for them to be transferred to prison and the fact that they get up at 6 am to come back to court sessions on the following day, thus impinging on the preparation of their defence. Once again, court schedule providing 30 minutes per each witness being deposed has proven not at all realistic for most of them.
8. The parties continue to be unaware of the full trial schedule; so much so that they do not even know the order for witness depositions, which makes preparing of examinations extremely difficult. This happened once again on March 19th: the parties learned then and there that the deposition of one of the witnesses (Mr. David Badal) had been postponed. Presently, the Court is only disclosing depositions schedule for the following week during the week in course. Such

unawareness limits the possibility to deploy full defence strategy accordingly.

Observers for this week:

- Bechir Labidi, Vice President of the Tunisian League for Human Rights (LTDH). His organization was awarded the 2015 Nobel Prize, Tunisia.
- Khadija Riyadi, UN Human Rights Prize in 2013 and Chair person of the Coalition of Magreb Organizations for Human Rights (CMODH), Morocco.
- Sahar Francis, Lawyer and Director of *Addameer*, an organization for the defence of political prisoners human rights, Occupied Palestinian Territory.

Contact people

Luca Gervasoni- spokesperson in Madrid-

Albert Caramés-spokesperson in Barcelona-

María Soler – Head of Communication in Madrid -

Alba Ortega- Head of Communication in Barcelona-