



## Press release 20.05.2019

### Assessments of Trial 1-0 (Week 14)

International Trial Watch attended all court sessions throughout week number fourteen of the trial and 10 national observers from the different parts of the country plus one international observer were present as follows:

- Jorge del Cura, Documentation Centre against Torture. Madrid.
- Ana Sebastián Gascón, Asociación Libre de Abogadas y Abogados Zaragoza (ALAZ)- Free Association of Lawyers. Zaragoza.
- Ramón Campos García. Asociación Libre de Abogados y Abogadas Zaragoza (ALAZ)- Free Association of Lawyers. Zaragoza.
- José Alonso Picó. Lawyer and Collaborator in Alerta Solidaria (Solidary Alert). Palma de Mallorca.
- Úrsula Erhardt. Lawyer specialist in Criminal Law and Human Rights. Germany.
- David Soto, member of Esculca- Observatory for the Defence of Rights and Freedoms. La Coruña.
- Cristina Serván, member of the Pro Human Rights Association of Andalucía (APDHA).
- Marta Herrero, lawyer, member of Red Jurídica (Legal Network) Madrid.
- Laura Salinas, member of Alerta Solidaria (Solidary Alert).
- Joseba Belaustegi, member of Erabakizaleak.

#### FOCAL POINTS

1. Chief Justice inconsiderate and obstructionist attitude towards defence counsels reached its highest, seemingly showing a lack of objective impartiality. Impartiality is a must from a right to an equitable trial perspective (article 6.1 ECHR). He has been limiting the scope of witnesses' depositions when narrating October 1st events and expressing how they lived it all, as well as their feelings of fear and astonishment vis-a-vis the aggressiveness of police forces against the citizens. This fact per se would be no reason for concern, if such type of appreciations or feelings had not been admitted by the Court when agents from national police and Guardia Civil, deposing as prosecution witnesses, expanded on the hatred feelings shown by demonstrators. Thus, the Court accepted expressions such as... "... I've never seen anything like that"... or "... the situations was worse than that experienced in Basque country when terrorism was at its peak moment" (statement made by officer holder of badge number Z66018U, court session number 27 on April 4th 2019).

Some of the observers this week insisted on this fact and indicated that Chief Justice interruptions of depositions do not flow on equal footing: defence counsels are constantly

interrupted and more consideration is shown to prosecutors, allowing them to raise fully worded questions, with no interruption whatsoever (even though some of their questions might have been eventually dismissed).

Along the same lines, some observers have noticed a profound lack of interest on the part of the Court in going deeper into the existence of violence on the day of the voting; thus defence counsels had a difficult job in trying to put forward all questions related to violent policing on such day. In addition, observers indicated their doubts with regard to Chief Justice subjective approach to the facts, persistently advocating for a given version of the facts and thus making the task of defence counsels incredibly difficult.

Such facts, described under such perspective, could indeed entail a breach of the equal arms principle.

2. Limitations imposed by the presiding judge managing the procedural exchanges between the parties have given rise to a firm protest by defence counsels (exercising their rights as per the Criminal Procedural Act and aiming at appealing at a later stage in the process). Such protests have been immediately followed by Chief Justice's firm rebuke who ordered defence counsels to proceed with the examination.

At this point in time, one of the lawyers indicated he had no further questions to which Chief Justice retorted "even better". From all of the above referred, some kind of parallelism may be drawn, in the Platform's opinion, with those processes held at the European Court of Human Rights against Spain (Otegui vs. Spain, 2018) where the Strasbourg Court determined the "loss of objective impartiality in the instructing magistrates".

3. Events occurred at the Supreme Court sessions last week resulted in a totally unusual fact: an unofficial press note was released by the Court indicating the "profound and unanimous uneasiness felt by Court" with defence counsels attitude and the behaviour of both lawyers and witnesses on the defence side. Such note should be interpreted as an extra procedural reprimand to one of the parties' strategy and, indirectly, a way to encourage such party to adopt a different strategy altogether as the current one is not considered appropriate.

Such situation is totally and completely opposite to the objective impartiality which should be prevailing in a courtroom on the magistrates' side, thus subsequently resulting in a limitation of the right of defence.

4. Section 2 has dismissed annulment of pre-trial detention with regard to Messrs. Junqueras, Sanchez, Turull, Rull (elected MPs) and Mr. Romeva (elected Senator), as it had been petitioned by them in order to attend the Parliament plenary constitution of Chambers, be formally confirmed as elected MPs and proceed in the future with the functions inherent to such title (recent Supreme Court writ dated May 14th). One of the main reasons alleged not to annul their pre-trial detention was that judgement rendered by ECHR on November 20th 2018 in the matter of Selahattin Demirtas vs. Turkey, was not applicable. According to the Court, if ideas are not prosecuted or ideology criminalized -as it was indicated in such ECHR judgement- pre-trial detention of an elected representative entails no breach of article 5 in the European Convention on Human Rights.

Further along the lines of such reasoning and if its main premise is distorted and thus this trial is

proven to be a political one, as many international observers present in the trial have so far claimed, then it would be obviously a case of breaching the defendants' freedom, according to such European Court of Human Rights doctrine.

Once again in this regard, some observers this week have warned about the lack of proportion in the defendants pre-trial detention. A reminder was issued to recall that " UN minimum rules with regard to non-custodial measures - Tokyo Rules- should apply and thus such non-custodial measures should be encouraged.

## Contact people

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