



## Press release 29.04.2019

### Assessments of Trial 1-0 (Week 11)

(No observers have attended the trial sessions this week, therefore this press release contains ITW platform considerations only)

In addition, ITW informs the citizenship that in order to guarantee continuity of national and international observation of the trial, ITW is in need of financial support. Donations shall be allocated to operational expenses of the Platform, logistic support, the observers' stay expenses and drafting of reports. Anyone willing to make donations, can do so through the web site: <https://internationaltrialwatch.org/donativos/>

#### The Platform points out the following:

1. Regarding how the Presiding Judge is conducting the trial: On the one hand, according to article 418 in LOPJ (Act governing the Judiciary) it is considered a severe fault for a judge to show an excess or an abuse of authority with regard to citizens and lawyers, amongst others. On the other hand, according to article 6.1. in the European Convention on Human Rights (ECHR), the right to a fair trial entails the right to an impartial judge, and impartiality of the court is defined as the "absence of prejudice or bias" STEDH (European Court on Human Rights judgement) dated January 15<sup>th</sup> 2015). And since STEDH October 1<sup>st</sup> 1982, in deciding whether the right to a fair trial has been undermined, any reasonable doubt about partiality should be examined, both subjectively- judge's personal conviction- and objectively- whether the court provides enough guarantees.

Bearing in mind the above mentioned legal framework, it is particularly concerning the way the Presiding Judge has been treating defence counsels and even some citizens. Overacting of the Presiding Judge does not allow a proper defence action, since he underscores, highlights and occasionally scorns irrelevance of such attempts and this could not only be considered an excess of authority, in the sense of LOPJ, but also an objective circumstance jeopardizing the right to an impartial judge. This week, it was particularly concerning to watch Presiding Judge's reaction when a witness who was a University Professor was trying to explain the contents of the *White Book* drafted by the Council for National Transition, used by the Prosecution as convicting evidence. In his own words, Presiding Judge said: "this is an insult to the members of this Court", referring to explanations given by the Professor regarding such *White Book*.

Such type of accusations do question the impartial nature of the court or the "necessary appearance of impartiality" (STEDH, June 7<sup>th</sup> 2001), thus becoming protagonist of a legal debate whereas prosecution and defence should be the only parties to it.

2. At this point in time of the proceedings, a lack of proportionality still persists between evidence so far contributed and the charges so far brought up by the prosecution for crimes as severe as rebellion and/or sedition.

Therefore, a growing concern prevails with regard to consideration given to some facts which can indeed be expression of the exercise of fundamental rights, such as the right to meet or the right to demonstrate, freedom of expression, as well as criminalization of some ideological aspects.

3. The persisting lack of proportionality is particularly concerning bearing in mind the defendants are still on pre trial detention. It is becoming less and less justified sustaining remand, in clear contradiction with the exceptional nature of such measure; and in any case very much against the recommendations and measure of the Council of Europe with regard to a restricted use of pre trial detention (Rules regarding sanctions and measures adopted in the community, dated 22.3.2017, Council of Europe)

### Contact people

Mercè Barcelò- Spokesperson in Barcelona.

Alba Ortega- Head of Communication in Barcelona.