



## Press release 01.04.2019

### Assessments of Trial 1-0 (Week 7)

International Trial Watch attended the hearing sessions held in the seventh week and 3 observers were present, as follows:

- Khadija Riyadi, Chairperson and representative of the Coalition of Maghreb Organizations for Human Rights (CMODH). First woman even chairing the Morocco Association for Human Rights (AMDH) and UN Special Human Rights Prize in 2013.
- Bechir Labidi, Secretary General and representative of the Tunisian League for Human Rights (LTDH). A political prisoner himself in Tunisia as a result of a trial with no guarantees in 2008 under Ben Ali's regime. LTDH in its capacity as member of the Quartet was awarded the 2015 Nobel Prize for its tasks in support of democracy in Tunisia.
- Sahar Francis, Lawyer and Director of *Addameer*, a Palestinian organization advocating for Human Rights and in support of political prisoners. A lawyer specializing in International Human Rights Law and International Humanitarian Law.

#### Assessments:

The Platform positively values:

Public Prosecution has provided a written response to International Trial Watch petition, filed on March 25th 2019 and registered under number 201900006245, requesting a meeting of international observers attending the trial sessions and the representatives of Public Prosecutor's office, for the observers to be able to gain an insight on all different stands. ITW will report whether such meetings do eventually take place.

- Nonetheless, we noticed that:
1. A new procedural issue of significant legal consequences has occurred in this case, that is the way police reports are being dealt with in the hearing session. Chief Justice rejected direct comparison of Lieutenant Colonel Baena's deposition with the police reports he was responsible for, indicating that the Court would only take into account depositions provided orally in the hearing. Needless to say that police reports in the proceedings will only be considered valid if

confirmed in the hearing. That said, in criminal proceedings it is key to be able to do direct comparisons of evidence and depositions during the trial, and even more so in this particular case, since investigation (and the order of pre-trial detention) are both based on such police reports.

2. In this regard, defence counsels only managed to have admitted a few questions- indeed few since Chief Justice has banned direct comparison between police reports and the witness deposition- and such questions revealed that the scope of the investigation back in 2015 was not specific facts, but rather a political movement. Thus, it was a "prospective investigation" which would make two things very obvious: on the one hand, this could be potentially a political process, not at all possible in the framework of the Spanish Criminal Procedural Law and on the other hand, it would establish clearly the witness lack of credibility, providing it could be proven that the person responsible for operations in this investigation, following the orders of Public Prosecutor, Mr. Zaragoza, did not act in an absolute neutral and impartial fashion as it is imperative by law (it has not been possible to prove this fact since the Court has totally rejected showing video footage in which Baena himself confirmed he was Tácito).
3. Policy officers deposing this week as witnesses have insistently repeated some concepts and fact descriptions, including words such as "hatred", "tumult", "mass", "powder keg", "insurrection", "fear"... Even though such concepts do not at all relate the defendants with the alleged charges, the Court has heard them over and over. The use of similar terms in different depositions could denote prior preparation and orchestration of such depositions and in addition, live streaming of this trial could indeed "contaminate" witnesses depositions.
4. 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.
5. Some negative aspects pointed out in previous weeks persist:
  - a) In terms of substance: 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 Public Prosecution is examining and leading witnesses in their answers, trying to infer that meeting, shouting and singing : "They shall not pass" or "We shall vote"; looking down on police officers or disapproving of police actions, could be *per se* existing evidence of sedition. A different interpretation of the use of violence may be inferred from prosecution's strategy and such interpretation could entail serious consequences for the so called "*criminalization of protest or dissidence*" and result in limitations of the free exercise of freedoms and fundamental rights of civil society in Spain ("*Chilling effect*").
  - b) As far as procedural aspects are concerned, 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. In addition, the scope of witnesses cross-examinations continues to be limited to issues raised during direct examination (thus potentially impinging on the equality of arms principle which could eventually translate during the proceedings in lack of appropriate material defence. Likewise the parties continue to be unaware of full trial schedule, as well as the order for witnesses deposition which makes it extremely

difficult to prepare examination of witnesses.

#### Observers for next week:

- Katrín Oddsdóttir, Human Rights Lawyer who took part in the drafting of Iceland Constitution, liberal in her ideas and focusing in particular on women's rights.
- Iñaki Esparza, Professor in Procedural Law at the University of Basque Country.
- Jean-François Blanco, Founder and Chairperson at the Institute of Human Rights, Bar Association of PAU.
- Isabelle Casau, Lawyer member of the PAU Bar Association (Ordre des Avocats de PAU).

#### Contact people

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