



Press release 10.06.2019

Assessments of Trial 1-0 (Week 17)

International Trial Watch attended sessions of week seventeenth of the trial. Two members of the platform attended together with four observers:

- Luisa Morgantini, Former European Parliament Vice President and former member of Human Rights Committee the European Parliament Committee, Italy.
- Claudio Paterniti, Researcher at Antigone ONLUS Association, Italy.
- Hans Lagenberg, Member of Fair Trial Watch, Holland.
- Dunder Gurses, Member of Fair Trial Watch, Holland.

Focal Points:

1. On Tuesday June 4th 2019, Chief Justice explained time allocation for Prosecution and Defence to present their final prosecution and defence reports. Defence counsels were granted one hour per defendant. Bearing in mind the magnitude of this trial which has been going on for four months now and the fact that Prosecution is requesting up to 74 years in prison, this timing was not considered to be sufficient. The need for a speedy trial involving nine defendants should not be in detriment of the defendants' right of defence: in order to respect procedural phases, as per article 733 in LECrim, it should be possible for defence counsels to prepare a counter report to all arguments raised by the prosecutors and to assess an evidence phase which has involved 422 witnesses and 16 experts, coupled with extensive documentary evidence. Additionally, there is a clear lack of proportion between seven hours allocated to Public Prosecution, State Attorney and Private Prosecution, compared to the twelve hours allocated to the defence of 12 individual defendants. Equally, the fact that this trial is held before the Supreme Court, means that there no possibility to appeal.
2. One of the most relevant sections in the Public Prosecutor's final report dealt with providing arguments to support the charge of rebellion, as per article 472 in the Criminal Code. Arguments provided by Public Prosecution depicted a very little democratic approach to the exercise of fundamental rights, such as the right to meet and to demonstrate, the right to freedom of expression, or the free exercise of a public office. Indeed, Prosecution arguments were political arguments, totally unrelated to an analysis of evidence and witnesses' deposition during the trial. In addition, all of these arguments

referred to public statements made by the defendants, press releases, or *tweets*, encouraging people to participate in peaceful demonstrations, indicating that all of this could be interpreted as calls for violence. This type of interpretations could be precursors of a deterrent effect for the exercise of rights and this is a widely developed concept in the European Human Rights Court case law which insists in particular on the need to be specifically careful in weighing up what could eventually be considered criminal behaviours and the exercise of fundamental rights in a democratic system.

3. A second part equally relevant in the Prosecutors final report was devoted to elaborate on and to provide arguments for the existence of a violent and public uprising, lead by the defendants. Yet, the Prosecution did not mention at any point in time when and where this public uprising took place. And this is a crucial element to prove such crime (the State Attorney did not prove either this aspect, with regard to sedition). On the other hand, the Public Prosecutors describe the situation in Catalonia during the months of September and October like a “violent insurrection”, based on the mass intimidating capacity, in the absence of qualitatively or quantitatively violent episodes. Regarding this theory of “surrounding or intimidating violence”, controverted judgments rendered by the Supreme Court were mentioned, such as the “Let's stop the Parliament” one. It was particularly concerning the parallelism drawn by the Prosecution between Tejero's coup and the 1-O referendum since, according to prosecutors, in both instances the vehicle for rebellion was intimidation as opposed to “explicit violence”.
4. According to Prosecution, the defendants lead an insurrection causing 1,093 injuries (93 of such injuries amongst members of law enforcement officers and 1.000 citizens). Thus, for the first time, the Prosecution did acknowledge the figure of 1000 citizens injured which had been a controverted fact all throughout the trial. In any case, to sustain that injuries suffered from an excessive use of force by the law enforcement officers, are to be blamed on the defendants just because they did not call off the 1-O Referendum, disrupts the principle of individual decision making in the exercise of violence, as well as the individualization of criminally relevant behaviours.

Observers for next week:

- Luigi Foffani, Professor in Criminal Law at the University of Módena and Reggio Emilia, Secretary General of Société Internationale de Défense Sociale (*International Society for Social Defence*) Italy.
- Fabio Marcelli, member of European Lawyers for Democracy and Human Rights (ELDH). Italy.
- Marco Aparicio, Chair person of Observatory DESC and Professor of Constitutional Law at the University of Girona, Spain.
- Ana Sebastián, Member of Asociación Libre de Abogados y Abogadas (*Free Association of Lawyers*) of Zaragoza. Spain.
- Andrés Campos Arto, Member of Asociación Libre de Abogados y Abogadas of Zaragoza. Spain.
- Professor Ms Mónica Aranda Ocaña, a professor in Criminal Law at the University of Barcelona, Spain.

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