



Spain: Open Letter: End the arbitrary pre-trial detention of social leader Mr. Jordi Cuixart

To:

Mr. Pedro Sánchez Castejón

President of the Government of Spain

Ms. María José Segarra

Spanish Attorney General

Mr. Francisco Fernández Marugán

Spanish Ombudsman

Geneva, November 22, 2018

Re: End the arbitrary pre-trial detention of social leader Mr. Jordi Cuixart

Dear Messrs. Sánchez Castejón and Fernández Marugán,

Dear Ms. Segarra,

The World Organisation Against Torture (OMCT), the largest network of NGOs fighting against torture, summary executions, enforced disappearances, arbitrary detentions, other cruel, inhuman or degrading treatment or punishment, and providing a comprehensive system of support and protection for human rights defenders in the world, is writing to you to express serious concern about the ongoing arbitrary pre-trial detention of Mr. **Jordi Cuixart i Navarro**, President of the non-governmental organisation Òmnium Cultural.



Òmniium Cultural is a non-profit organisation, founded in 1961 under Franco's dictatorship to promote the use of the Catalan language, which had been suppressed and reduced to family use for decades, and culture. Throughout the years, the NGO has expanded its areas of work. In 2015, it led a campaign against impunity for crimes committed during Franco's dictatorship as well as the campaign "shared struggles" that aimed at recalling 50 years of joint commitment between civil society organisations fighting for workers' rights, non-discrimination on grounds of sex or origin or the right to housing. In 2018 it also launched a campaign "Tomorrow it could be you", that aims at denouncing the Organic Law on the Protection of Citizen Security (known as the Gag Law, "*Ley Mordaza*") and the reforms of the Criminal Code, which have been widely criticized due to the imposition of severe limitations on the rights to freedom of assembly and expression[1].

The OMCT recalls that Mr. Jordi Cuixart has remained in pre-trial detention[2] since October 16, 2017, on charge of "sedition" (article 544 of the Spanish Criminal Code). On March 21, 2018, Mr. Cuixart was also charged with "rebellion" (article 473 paragraph 1 of the Criminal Code). On November 2, 2018, the Public Prosecution requested 17 years in jail for Mr. Cuixart.

The charges relate to Mr. Cuixart's leading role in the mobilisation of 40,000 demonstrators on September 20, 2017, who gathered outside the Regional Ministry of Economy, while a judicial commission, composed of 25 Civil Guard agents, was inside searching its facilities[3], to protest against the raids, searches and arrests of various Catalan officials that were carried out by the Spanish police with the aim of stopping the referendum on Catalan independence, which was organised on October 1, 2017, and which Spain's Constitutional Court had declared illegal[4]. The OMCT is also seriously disturbed by the pre-trial detention of **Mr. Jordi Sánchez I Picanyol**, former president of the Catalan National Assembly (ANC) - grassroots organisation with around 80,000 members which advocates for Catalan independence - who has been deprived of liberty and prosecuted with the charges, and for the same facts, as Mr. Jordi Cuixart.

The OMCT recalls that freedom of assembly enshrines the liberty to come together to debate and speak out about shared concerns as long as the organisers of the gathering have peaceful intentions, means and manners. Nevertheless, as observed by the OSCE/ ODIHR Guidelines on Freedom of Peaceful Assembly, the "the ?????? and distribute leaflets cases CT is concerned

by the fact that Supreme Court wave placards and distribute leaflets and distribute leaflets sensitive cases. CT is concerned by the fact that Supreme Court wave placards and distribute leaflets. The term 'peaceful' should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties"[5]. In the case *Taranenko v. Russia* (15 May 2015, Application no. 19554/05)[6] the European Court of Human Rights underlined that the protest, although involving some disturbance of public order, had been largely non-violent and had not caused any bodily injuries and highlighted that the disproportionate sanction against Taranenko had a deterring effect on protesters.

On October 4, 2017, OMCT also criticised the indiscriminate and excessive use of force by the police in Catalonia during the referendum organized on October 1, 2017, and called for an immediate, exhaustive and impartial investigation of police interventions that could amount to torture or cruel, inhumane or degrading treatment[7].

The OMCT recalls that Mr. Cuixart has lodged requests and appealed several times against to be released, before Spain's Criminal Chamber of the Supreme Court and the Constitutional Court, with no success. The prosecutor and the courts assert that there is risk of recidivism if he was granted release, arguing that he could lead mass demonstrations that favour a social uprising and he belongs to an organized group which pushes for Catalan independence by means outside the Spanish legal framework. The OMCT further recalls that as a measure impacting the right to personal liberty, in order to be compatible with international standards and the presumption of innocence, pretrial detention must only be applied as a last resort.

The OMCT condemns the ongoing arbitrary detention and judicial harassment against Mr. Jordi Cuixart and Mr. Jordi Sánchez, which constitutes a disproportionate restriction on his fundamental rights to free expression, peaceful assembly and personal liberty. The OMCT further considers that the charges against them are unfounded and must therefore be dropped.

The OMCT is also particularly concerned by the fact that Mr. Cuixart and Mr. Sánchez are prosecuted before the Supreme Court (*Tribunal Supremo*), the highest judicial body, whose decisions are not subject to appeal, instead of being prosecuted in front of their natural judge. Moreover, OMCT is concerned by the fact that Supreme Court judges are appointed by the General Council of the Judiciary (CGPJ), body elected by the Spanish parliament, in a process which has been challenged due to political interference which can potentially jeopardize the independence of the high ranks of the judiciary, particularly in politically sensitive cases[8]. The highly political nature of the ongoing criminal procedure is evidenced by the fact that the far-right political party VOX is taking part of the private prosecution.

Accordingly, the OMCT respectfully urges you to:

i. immediately and unconditionally release Mr. Jordi Cuixart and Mr. Jordi Sánchez, as their pre-trial detention is arbitrary:

ii. put an end to all acts of harassment, including at the judicial level, against them and guarantee in all circumstances the right to a fair trial, in particular by:

- ordering that the facts be examined by their natural judge, in application of the right to equality before the courts, by transferring the file to an ordinary court and competent to judge facts that took place in Catalonia;
- guaranteeing that Messrs. Jordi Cuixart and Jordi Sánchez can benefit from a double degree of jurisdiction.

iii. comply with all international obligations to respect the exercise of the citizens' rights to freedom of expression and freedom of association and assembly, as established in the International Covenant on Civil and Political Rights (ICCPR), in particular its Articles 19.2 and 21, in particular by:

- amending the Basic Law for the Protection of Public Security and the Criminal Code so as to guarantee the highest international human rights standards regarding the right to social protest.

iv. Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by Spain.

In the hope that the concerns expressed in this letter will receive the attention they deserve, we remain at your disposal for any further information.

Sincerely yours,

Gerald Staberock

OMCT Secretary General

[1] For more information, see <http://www.omct.org/es/human-rights-defenders/statements/spain/2015/03/d23072/>.

[2] Jordi Cuixart was held for eight months in Soto del Real prison (Autonomous Community of Madrid), 700 km away from his place of residence, and, since July 2018, he is in Lledoners Prison

(Autonomous Community of Catalonia).

[3] The judicial commission was de facto blocked inside the Regional Ministry of Economy for 19 hours, due to the presence of crowds outside the building, the last agents were able to exit on the early morning of September 21, 2018, escorted by the Mossos d'Esquadra (police force of the Autonomous Community of Catalonia).

[4] Repressive measures taken by Spanish authorities ahead of the Catalan referendum on October 1, 2018, were criticized by UN experts, stating that "regardless of the lawfulness of the referendum, the Spanish authorities have a responsibility to respect those rights that are essential to democratic societies". See UN statement, September 28, 2017, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22176>.

[5] OSCE / ODIHR Guidelines on Freedom of Peaceful Assembly, para. 1.3. Available at: . <https://www.osce.org/odihr/73405?download=true>

[6] The case concerned the detention and conviction of a participant in a protest against the politics of Russian President Vladimir Putin in 2014, organised by the Bolsheviks Party. Yevgeniya Taranenka was part of a group of about 40 people that forced their way through identity and security checks into the reception area of the president's administration building and locked themselves in one of the offices, where they started to wave placards and distribute leaflets out of the window.

[7] For more information see: <http://www.omct.org/es/urgent-campaigns/statements/spain/2017/10/d24562/>

[8] The criteria and evaluation requirements for the appointment of the higher ranks of the judiciary, including the Supreme Court judges, in Spain, have been questioned by the Group of States against Corruption (GRECO), Council of Europe's anti corruption body, who has recommended that objective criteria are laid down to ensure that these appointments do not cast any doubt on the independence, impartiality and transparency of this process. Fourth Evaluation Round of Spain, GrecoRC4(2017)18, para. 39. See also "Rights International Spain and Judges for Democracy Request UN Expert Visit to Spain, 22 February 2017 (<https://www.liberties.eu/en/news/ris-jueces-para-la-democracia-letter-to-un/11444>).