

Ms. Mary Lawlor
United Nations special rapporteur on the
situation of human rights defenders

By email:
defenders@ohchr.org

Geneva and Barcelona, 15th March 2021

Jordi Cuixart, a human rights defender sentenced to nine years in prison

Dear Special Rapporteur,

We are writing to you on behalf of Omnium Cultural, a civil society organisation whose president, Jordi Cuixart, is currently incarcerated in the Lledoners prison (Barcelona province). The information is submitted in the name of our organisation and have been validated by our President.

I. The facts

1. Jordi Cuixart is a Catalan businessman born in 1975. He is married and the father of two children. Since 2015 he has been the president of the association [Omnium Cultural](#) (hereinafter, Omnium).
2. This organisation was founded during the Franco dictatorship in order to protect the right to use the Catalan language, and to promote Catalan culture. Following the adoption of the Spanish constitution in 1978, Omnium has been more broadly engaged in the defence of fundamental rights. The association has more than 182,000 members.
3. In September 2017, the Catalan parliament and government took steps to organise a self-determination referendum. The law providing for the holding of the referendum was suspended by the Spanish constitutional court. The referendum was nevertheless organized on 1st October 2017. The Spanish government then deployed more than eight thousand police officers and the judiciary initiated criminal proceedings against hundreds of elected officials and members of the Catalan administration.

4. Following yet another police intervention, on 20th September 2017, several thousand demonstrators gathered in front of the Catalan economics department, the building of which was being searched at the time. To prevent an escalation of the situation, the several civil society organisations intervened with the intent to coordinate this demonstration. Over the day, about 40,000 people assembled for several hours. According to the daily newspaper [*El País*](#), despite the indignation, "There was a peaceful, family atmosphere in front of the Department."
5. Jordi Cuixart spoke several times, appealing to demonstrators to remain peaceful and to allow the officers carrying out the search to pass through the crowd. Stewards were organised by another civil society organisation, the Catalan National Assembly (hereinafter referred to by its Catalan acronym, ANC), in order to make the crowd move and let the officers through safely. At midnight, in accordance with the arrangements agreed upon with the authorities, the President of Omnium announced the end of the gathering, and asked those present to leave. This is how the demonstration came to an end.
6. On 1st October 2017, more than two million people voted in response to the question, "Do you want Catalonia to be an independent state in the form of a republic?" The turnout was 42.4%. 90% of the votes were yes.
7. During the day, the President of Omnium sent numerous tweets urging people to "defend the polling stations", while using terms like. "Stay calm. All sit on the ground," "Peaceful resistance," "In the face of aggression, hands in the air and call out 'We are peaceful people'. This is the slogan: 'peaceful resistance'," and also, "Today we defend the ballot boxes, more than ever and come what may. We appeal to a peaceful attitude in defence of democracy."
8. In several localities, voters were brutally attacked by the police, causing nearly a thousand people being injured. This violence was the object of strong international criticism and several hundred complaints were lodged.
9. On 3rd October 2017, there was a general strike to protest against police violence. The strike was followed by 70-80% of working people in Catalonia.
10. On 4th October 2017 the Audiencia Nacional, a Spanish national court, summoned the President of Omnium to answer a charge of "sedition" (art. 544 of the Spanish criminal code) in connection with the demonstration of 20th September 2017. At the hearing two days later, Jordi Cuixart exercised his right to remain silent and was released without alternative measures.
11. On 16th October 2017, he was summoned to a second hearing concerning the same events. He obeyed the summons and refused to reply.

12. This time the investigating judge ordered that he be remanded in custody. The President of Omnium was then detained in the Madrid V prison, 630 kilometres away from his home.
13. It was only in July 2018, six months later, that he was transferred to the Lledoners prison in Catalonia, where he remains.
14. The criminal proceedings begun by the *Audiencia Nacional* were then taken up by the *Tribunal Supremo* (supreme court). This court then re-categorised the events as "rebellion" (art. 473 sec. 1 of the criminal code), a crime punishable by a sentence of up to 25 years in prison.
15. The trial was scheduled for the beginning of 2019. The President of Omnium's defence immediately complained that protection of national unity was being used in the proceedings to justify the restriction of the peaceful exercise of numerous fundamental rights, with no legal basis and in breach of the principle of proportionality. The defence also criticised the role of the far-right party VOX, allowed by the supreme court to intervene in the proceedings as "private prosecution", despite protests by the defence.
16. The trial began on 12th January 2019. Alongside the President of Omnium were eleven other people, including the former president of the ANC, as well as former members of the Catalan government and parliament.
17. During the three months of hearings, the presiding judge, Manuel Marchena, regularly intervened to prohibit the President of Omnium's defence from questioning witnesses. Mr. Marchena openly and repeatedly complained about the defence strategy chosen by Jordi Cuixart and his counsels. During the examination of a witness, the judge told the President of Omnium's lawyer that "she was wandering in her defence strategy". During another cross-examination, the judge constantly interrupted a defence lawyer. When the lawyer indicated that he had no further questions, the presiding judge said, "Good, so much the better." Following this session, the court issued a message to journalists expressing the "profound concern by the judges" at Jordi Cuixart's defence strategy, indicating that it found the lawyers' behaviour "intolerable". This message was widely reported in the press and led to a unanimous reaction by all the Catalan bar associations, which called on the court to respect the right of defence.
18. On 13th June 2019 the United Nations Working Group on Arbitrary Detention (WGAD) recognised that the detention of Jordi Cuixart and others detained in the same proceedings was "arbitrary". The WGAD called on Spain to release them immediately and open an enquiry concerning the infringement of their fundamental rights. On the same day, the President of Omnium's defence called for the release of Jordi Cuixart, an application that was refused by the court.

19. On 14th October 2019, the supreme court found Jordi Cuixart guilty of sedition and sentenced him to nine years in prison, as well as nine years of disqualification from public office. The verdict recognised the absence of violence in the behaviour of which Jordi Cuixart was accused, but considered that the number of people involved as well as the peaceful resistance exercised represented a "tumultuous uprising" (*levantamiento tumultuario*) in the sense of the Spanish criminal code, justifying a severe sentence.
20. On 12th November 2019, the President of Omnium filed an appeal against the verdict, alleging the infringement of several fundamental rights. In a decision of 29th January 2020, the supreme court rejected the appeal.
21. Jordi Cuixart's conviction was then the subject of an appeal for enforcement of rights (*amparo*) to the constitutional court, lodged on 6th March 2020, for infringement of the right to a judge stipulated by law, infringement of the right to an independent, impartial judge, infringement of the right to freedom of peaceful assembly and infringement of the right to legality in criminal proceedings. The appeal was filed in Catalan.
22. In an order of 10th March 2020, the constitutional court gave Jordi Cuixart a time to have the appeal translated into Spanish. Although this demand had no legal basis, a translation was nevertheless supplied.
23. On 6th May 2020, the constitutional court declared the appeal admissible and a month later ordered the continued detention of the President of Omnium.
24. On 22nd October 2020, Jordi Cuixart and other defendants filed a motion for the disqualification of one of the judges of the constitutional court. This judge had spoken at a public conference in Granada, describing the alleged actions of the President of Omnium as a "covert *coup d'état*", adding that these were "much more serious actions because of their consequences than the *coup d'état* of 1981", referring to the storming of the Spanish parliament building by paramilitaries close to the former dictatorship. After more than four months of consideration, the judge decided to withdraw from the proceedings.
25. More than a year after lodging his appeal, Jordi Cuixart remains imprisoned, waiting for the constitutional court to reach a decision. If this court upholds the verdict of the supreme court, the case will be referred to the European court of human rights.

II. The rights infringed

- i) Infringement of the right to a fair trial (ICCPR art. 14 § 1)

Under Spanish law¹, the supreme court is only competent to investigate and try in the first instance proceedings against people covered by a special status resulting from their executive function, either legislative or judiciary. No legal basis explicitly stipulates that this competence should extend to a person who does not perform the above functions. Prior to the proceedings subject to this request, the supreme court had always refused to intervene in the first instance against any persons other than judges or elected officials.

Jordi Cuixart has never performed any elected function, or been a member of a government or of the judiciary. Despite this, the supreme court declared itself competent because of the alleged connection of between the events and those for which former members of the Catalan parliament and government are accused.

This decision on competence involves a reversal of jurisprudence and well-established legal practice. This change is not founded on any explicit legal basis. It seriously prejudices the rights of the President of Omnium, who has lost the possibility of having his conviction re-examined by a court of appeal, has been tried in a court located several hundred kilometres from his home and has been unable to benefit from a trial in his first language.

Furthermore, the supreme court has repeatedly expressed its explicit rejection of the defence strategy adopted by the President of Omnium. This has been manifested by the numerous prohibitions to question witnesses and the derogatory comments about the work done by the appellant's counsels. While the trial was still ongoing, the court unanimously informed journalists of their "profound concern" at the work done by the President of Omnium's defence, eliciting a unanimous reaction from all the Catalan bar associations in defence of the lawyers concerned. The criticism of the defence strategy and the court's decision to communicate these critics to the press infringe upon the right to a fair trial and an affective defence.

ii) Infringement of the right to legality in criminal proceedings (ICCPR art. 15)

The offence of sedition is drafted in vague terms, leaving an excessive margin for interpretation. This ambiguity is particularly dangerous when a broad interpretation leads to criminalising actions covered by the exercise of fundamental rights. The possible penalty is extremely severe, the "organiser" being liable to a term of at least eight years in prison, which should require a narrow interpretation excluding all behaviour falling under the freedom of peaceful assembly.

Furthermore, Jordi Cuixart has been sentenced for his support to the organisation of a self-determination referendum. However, the offence of "support" to the organisation of an illegal referendum was repealed in 2005 (ex-art. 521b of the Criminal Code) and the Spanish

¹ Art. 57 sec. 1 ch. 2 of Organic Law 6/1985 on the Judiciary (LOPJ); Art. 2 & 70 sec. 2 of the Statute of Autonomy of Catalonia.

legislator refused to restore it in 2019. Therefore, the conduct for which the President of Omnium has been sentenced was not punishable at the time of the events, in accordance with the explicit and repeated decision of the Spanish parliament.

The sentencing of the President of Omnium to a term of nine years in prison for his role in the holding of a peaceful demonstration and the organisation of the referendum are gross violations of the requirement for legality.

iii) Infringement of the right to freedom of peaceful assembly (ICCPR art. 21)

The demonstration of 20th September, as well as the referendum of 1st October, were peaceful assemblies. The conviction of the President of Omnium was not provided for by law.

In terms of proportionality, Spanish justice does not accuse Jordi Cuixart of any acts of violence or appeals to violence. Despite this, the supreme court decided on an extremely heavy sentence.

This sentence is even more disproportionate as the President of Omnium is a "human rights defender", recognised as such by the [Council of Europe](#). His conviction has been the subject of very widespread criticism by, among others, the main organisations in defence of human rights, including [Front Line Defenders](#), [Amnesty International](#) and the [World Organisation Against Torture](#).

The arrest and conviction of the President of the largest association in Catalonia for actions covered by the freedom of peaceful assembly has had a chilling effect on civil society in Catalonia and in Spain, instilling serious fear in anybody wishing to mobilise peacefully in defence of the exercise of peoples' right to self-determination.

III. Recommended interventions

In the light of the above, we respectfully request your authority to engage in the following actions:

- Intervene with the Spanish government to call for the implementation of the measures recommended by the WGAD, *i.e.* the immediate release of the applicant, recognition of the infringement of his fundamental rights and the granting of appropriate compensation.
- Organise a visit to Catalonia, in particular in order to meet Jordi Cuixart in the Lledoners prison or, in view of the current difficulties in travelling, organise a video-conference from the prison visiting room.

- Should the conviction be confirmed by the constitutional court, considering the preparation of an *amicus curiae* brief for the proceedings which would likely be initiated before the European court of human rights.

We thank you in advance for your attention on this matter and remain at your disposal should you require further information.

Yours sincerely,

Elena Jimenez i Botias
International representative
of Omnium Cultural

Olivier Peter
International lawyer
for Jordi Cuixart