



# General Assembly

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## Human Rights Council

### Fortieth session

25 February–22 March 2019

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Written statement\* submitted by Réseau Européen pour l'Égalité des Langues, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 February 2019]

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\* Issued as received, in the language(s) of submission only.

GE.19-05632(E)



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## **Violation of fundamental rights as a result of the overprotection of the territorial unity: The case of Spain.**

Mr. Jordi CUIXART, president of the NGO Òmnium Cultural, has been on trial since February 12th, 2019, after 16 months in pre-trial detention on charges of rebellion and sedition, for which he faces a 17-year prison sentence. Mr. CUIXART was arrested and detained as a result of his activities in support of the universal right to self-determination and in particular for having campaigned for it by organizing peaceful demonstrations and assemblies. The opening of legal proceedings against Mr CUIXART and, even more seriously, the deprivation of his freedom constitute a serious violation of his right to the promotion and defence of fundamental rights.

### **1. Violation of fundamental rights as a result of the overprotection of the territorial unity of Spain**

The State's reaction to the call for a referendum on the self-determination of Catalonia pushed aside the democratic rule of law in the months of September and October 2017, as denounced by experts from the UN.<sup>123</sup> Under the pretext of defending the unity of Spain, more than 10,000 police officers were sent to Catalonia and newspapers and other premises were searched, including an attempt to conduct a police search at the headquarters of a political party despite the absence of a warrant. Voting material was confiscated, as well as the closure of websites, the banning of public events related to the referendum, and the arrests of several people.

### **2. Violation of the Right to Freedom of Expression**

The proceedings attempt to build a case against Mr. CUIXART based on acts that fall within the exercise of the right to freedom of expression such as speeches, interviews, websites or WhatsApp groups. This fact entails the criminalisation of political discourse and constitutes a violation of the right to freedom of expression found in Art. 10.2 European Convention on Human Rights (ECHR) and Art. 20.1.a of the Spanish Constitution. Furthermore, this violation has a chilling effect on society regarding the use of a right that constitutes one of the essential foundations of democratic society.

### **3. Violation of the Right to Peaceful Assembly**

The accusations convert peaceful acts of protest into criminal acts, violating the right of assembly found in Art. 11 ECHR and Art. 21 Spanish Constitution. The basis of the motion is Mr. CUIXART's participation and public intervention in, and calling for, peaceful mobilisations. These events cannot be criminalised, since the same event cannot be both a crime and an exercise of a fundamental right. This was stated by the UN Special Rapporteur on human rights defenders in his report issued December 2018, in which Mr. CUIXART was cited.

### **4. A trial on the Right to Self-Determination**

From the indictment it is evident that what is being criminalised is not so much a specific manifestation of the right to self-determination, but rather the aim of self-determination itself enshrined as a universal right in Art. 1 ICCPR and ICESCR. The Constitutional Court itself has declared that the Constitution does not address all the problems that may arise in

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<sup>1</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22192&LangID=E>

<sup>2</sup> <https://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=22197&LangID=E>

<sup>3</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22295>

constitutional matters, and that it is up to the public authorities to resolve them through dialogue and cooperation.

## **5. Torture, inhuman or degrading treatment**

Art. 3 ECHR prohibits torture and other cruel, inhuman or degrading treatment or punishments. The police actions of the Spanish Civil Guard (military police) and the National Police during the referendum on 1st October 2017 started with the arrival of numerous troops at polling stations who were. It resulted in approximately 1.000 people being injured.

That act of inhuman or degrading treatment according to the Convention against Torture, ratified by Spain, deserves a prompt, impartial and effective investigation. This investigation was demanded by numerous international organisations, for example, the Vice-President of the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights of the Council of Europe, Amnesty International, Human Rights Watch, and the World Organisation Against Torture.

## **6. A trial in a court that lacks jurisdiction**

6.1. Art. 6 ECHR, Art. 14.1 ICCPR and Art. 24.2 of the Spanish Constitution contain provisions regarding the principle that access to the ordinary court established by law is an essential element for a fair trial. Spanish law provides that when a crime is committed in Catalonia, a Catalan court has the jurisdiction to investigate and judge the case. Indeed, the Supreme Court is an exceptional court just for persons with granted immunity, but Mr. CUIXART is a citizen without any privilege.

6.2. In Article 14.5, the ICCPR states that any person convicted of an offence has the right to have a guilty verdict and conviction reviewed by a court at a higher jurisdiction in accordance with the law. In the proceedings, however, the Supreme Court has declared itself to be the sole instance.

6.3. The right to an impartial and independent court is included in Art. 6.1 ECHR and 24.2 Spanish Constitution. The lack of independence of the judges of the Supreme Court and the close links between this court and the political power are the result of a structural problem in Spanish justice. In fact, it was made public that the two main political parties in Spain made an agreement to choose the president of the criminal courtroom of the Supreme Court, Mr Manuel MARCHENA (the one judging this case), as the president of the General Council of Judiciary. The law states that the members of the General Council of Judiciary must elect the president, not the political parties. Moreover, a senator of the Popular Party sent a mobile message to a group from the PP conservative party saying that with this agreement "they get control of the criminal courtroom of the Supreme Court".

## **7. A trial without guarantees, violation of the fundamental right to fair trial**

7.1. The presence of a chauvinistic and xenophobic party such as VOX filing a civil motion for electoral purposes undermines the essence of this procedural tool and contradicts international commitments.

7.2. There have been numerous procedural violations that make it impossible to consider that Mr. CUIXART is receiving due process as required by Art. 6 ECHR and 24.2 Spanish Constitution, mainly regarding three issues:

- The Court Order of the Chamber that confirms the conclusion of the summary proceedings postpones the examination of the defences' claims regarding the existence of procedural violations that give rise to defencelessness; infringements which violate the right to effective judicial protection and the right to a fair trial.

- The investigator of the proceedings has merely "brought together" supposedly incriminating material produced outside these judicial proceedings, and delegated the investigation to other courts, and to a certain judicial police unit.
- The inquiries of the judicial police have produced reports that are socially and politically biased and do not concern the investigation of facts related to any offence.

## **8. A trial violating the principle of legality in criminal law**

Nobody can be prosecuted or convicted in the absence of a law that classifies the facts that the State wishes to sanction as a crime, as provided in Art. 7 ECHR, Art. 11.2 UDHR and Art. 15 ICCPR. One of the main facts of the indictment, i.e. the calling and holding of a referendum without authorisation, has been a manifestly atypical behaviour since 2005.

## **9. A trial that violates the presumption of innocence**

The presumption of innocence, recognised in Art. 6.2 ECHR, Art. 14.2 ICCPR, and 24.2 Spanish Constitution, guarantees that no one can be presumed guilty until the accusation has been proven beyond a reasonable doubt. In the present case, in the Spanish legislative chambers, there have been numerous interventions, debates and approvals of motions regarding the possible granting of pardons to the defendants, with the implication being that the State authorities already assume them to be guilty.

## **10. A trial involving the arbitrary detention of the defendant**

Article 5 ECHR establishes the right to freedom and safety of any citizen as a general principle; a right also included in Art. 17 of the Spanish Constitution and in Art. 9 ICCPR. The ECHR also establishes the obligation of case-by-case judicial review, without the possibility of only taking into account the severity of the penalties provided as the sole criterion. In this particular case, the OMCT called the detention arbitrary and Amnesty International described the pre-trial detention as disproportionate. The Front Line Defenders organisation considers Mr. CUIXART as a Human Rights Defenders, and says that the criminal procedure to be an act of "reprisal for his work on the protection of civil and political rights".

The European Language Equality Network (ELEN) and Òmnium Cultural therefore urge Human Rights Council members and observer states to:

Raise these concerns in the Council debates and bilateral dialogues with the Spanish Government, and

Call on the Spanish authorities:

- to immediately release the Catalan political prisoners being held in prison;
  - to comply with the fundamental rights contained in the international conventions and in its Constitution;
  - to investigate police violence during the October 1st self-determination referendum by the national police and the Civil Guard;
  - to seek a political solution to the conflict and put an end to the judicialisation of what is a political dispute.
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