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## Human Rights Council

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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.

[31 May 2021]

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



## **Violation of freedom of expression and of peaceful assembly: chilling effect in Catalonia, Spain and Europe with the condemnation of civil society leaders for organising peaceful demonstration**

1. The celebration of the self-determination referendum in Catalonia (Spain), led to the arrest and imprisonment of various social and political leaders, as well as the exile of a few others. The criminal proceeding against nine of those leaders resulted in the Spanish Supreme Court Sentence of October 14, 2019, with harsh sentences for the crime of sedition that range for each of the defendants between 9 and 13 years in prison.
2. In parallel, the Spanish Courts began to instruct various proceedings for the preparation of the mentioned referendum, cases still pending and which already affect hundreds of citizens. Moreover, as a result of the protests against the judgement there were various arrests of protesters.
3. The demand to end the repression and to seek a political solution to the conflict, specifically a referendum like the one held in Quebec or Scotland, has the support of 80% of the Catalan population. Instead, the reality so far is that judicial repression continues and social and political leaders remain imprisoned.
4. Regarding the events that occurred on September 20 2017 and the right to peaceful assembly, the facts are that several thousand demonstrators gathered on the streets in Barcelona (Catalonia-Spain) to protest against police searches and arrests and several civil society organisations came together to coordinate it. Cuixart played a leading role, achieving a peaceful and family-friendly atmosphere. The political conflict between Spain and Catalonia has mobilised many people since 2012, mainly through good-natured, child-friendly events and demonstrations of approximately one million people, organised by civil society organisations like Omnium Cultural. Moreover, specifically regarding the context of Cuixart's detention, on October 1, 2017, more than two million people took part in the referendum. In several municipalities, voters were brutally attacked by the Spanish police, causing around 1,000 injuries, according to data from the public health service. This intervention was the subject of strong international criticism.
5. Jordi Cuixart is a human rights defender and president of the civil society organisation, Omnium Cultural, an NGO member of our european network European Language Equality Network (ELEN). He is the only imprisoned human rights defender in the entire European Union. In June 2021 he has been in prison for over three and a half years. On 1st July it will be his 1.353 night in prison. He was imprisoned on October 16, 2017, for his participation in that peaceful demonstration on September 20, 2017, and for his support in the mass mobilisation of citizens in favour of a referendum for self-determination in Catalonia. After two years in pre-trial detention, he was sentenced to nine years' imprisonment and nine years of disqualification. The verdict recognised a lack of violence in the behaviour he was accused of when he organised the peaceful demonstration on September 20, 2017 but found that the number of people involved was too high and represented a "tumultuous uprising".
6. Cuixart has been widely recognized as a human rights defender at risk by Front Line Defenders<sup>1</sup>, the UN Special Rapporteur on Human Rights Defender<sup>2</sup>, the General Rapporteur on Human Rights Defenders in the Council of Europe<sup>3</sup> and several international NGOs and personalities. His conviction has been widely criticized by the main organisations in defence

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<sup>1</sup> <https://www.frontlinedefenders.org/en/profile/jordi-cuixart>.

<sup>2</sup> <https://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf>.

<sup>3</sup> <http://www.assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2019/AS-JUR-2019-31-EN.pdf>.

of human rights and by other UN Special Rapporteurs<sup>4</sup>, which have all claimed that Cuixart was exercising the right to peaceful assembly and have asked for his immediate release<sup>5</sup>.

7. A Special Procedure was initiated during 2019 by 3 UN Special Rapporteurs<sup>6</sup> and by the vice president of the WGAD, conveying to Spain their “concern about the arrest and prosecution of Mr. Cuixart for the crime of rebellion, for acts that do not appear to involve violence or incitement to violence by Mr. Cuixart, which would interfere with his rights to public protest and freedom of expression. In this regard, we recall that international human rights law warns that restrictions on these rights should only be imposed when they are strictly necessary and proportionate.”

8. On 13th June 2019, the UN Working Group on Arbitrary Detention (WGAD)<sup>7</sup> recognised that the detention of Cuixart and others detained in the same proceedings was “arbitrary”. The WGAD called on Spain to release them immediately and open an inquiry into the infringement of their fundamental rights, but Spain refused to comply.

9. The legislative framework introduced in 2015 in Spain criminalises the right to protest through the amendments to the Criminal Code and the Citizen Security Law (“Gag Law”). Several activists have had their human rights violated, particularly the freedom of expression and the right to peaceful assembly. Many have suffered repression: for defending housing and trying to stop illegal evictions, like Joan Segura; for organising assistance for migrants in the Mediterranean, like Elena Maleno; for criticising the Spanish monarchy, like Pablo Hasel and Valtònyc; and for organising peaceful demonstrations connected to the self-determination referendum in 2017 and 2019, like Jordi Cuixart. The right to freedom of expression has been violated due to accusations of “insulting the monarchy” and “glorifying terrorism”. According to Freemuse<sup>8</sup> Spain is the world’s country with more artists sentenced (15). Amnesty International<sup>9</sup> warns that self censorship is increasing and that criminalization enhances the chilling effect on social mobilization.

10. Cuixart’s arrest and conviction for actions covered by freedom of peaceful assembly has had a chilling effect on Catalonia and Spain, instilling serious fear in anyone wishing to mobilise the citizens for very different reasons. Judicial and administrative processes employed against hundreds of citizens have led to a situation where there are currently 843 people still undergoing legal proceedings for having participated in peaceful protests connected with the referendum. This has put the impartiality of the judiciary and the disproportionate use of force by the police into question.

11. The fact that there is a human rights defender in prison in a democratic country like Spain, in Western Europe, is rare and shocking. His case represents a dangerous precedent that could open the door to further criminalisation of those exercising the right to protest in different countries. If such a situation is allowed to happen in a democracy, more authoritarian countries will feel a sense of legitimacy in pursuing their anti-democratic practices. Specifically, when some international organisations criticise different member states for enacting restrictive laws and criminalising peaceful demonstrations, or the lack of independence in their judiciary system, or a disproportionate use of force by the police, yet says nothing about western Europe, it represents a double standard. Defending Jordi Cuixart and denouncing his imprisonment is one way to protect other defenders.

12. If the Spanish Constitutional Court denies his appeal for protection, Jordi Cuixart will take his case to the European Court of Human Rights. Cuixart’s violated rights include the right to a judge stipulated by law, the right to an independent and impartial judge, the right to freedom of peaceful assembly and the right to legality in criminal proceedings. Cuixart has never held any elected office or been a member of the government or the judiciary, and he is not a politician. Nevertheless, the Supreme court, which only has jurisdiction to investigate

<sup>4</sup> <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22928&LangID=E>.

<sup>5</sup> <https://www.amnesty.org/en/latest/news/2019/11/spain-conviction-for-sedition-of-jordi-sanchez-and-jordi-cuixart-threatens-rights-to-freedom-of-expression-and-peaceful-assembly/>.

<sup>6</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24271>.

<sup>7</sup> <https://www.undocs.org/A/HRC/WGAD/2019/6>.

<sup>8</sup> <https://freemuse.org/wp-content/uploads/2019/03/saf-2019-online.pdf>.

<sup>9</sup> <https://www.amnesty.org/download/Documents/EUR4179242018SPANISH.PDF>.

people in executive, legislative or judiciary functions, declared itself competent. This seriously compromised the rights of Cuixart, who, for example, could not appeal his conviction. His right to a flexible regime has also been violated under the excuse that “he has not acknowledged his crime, nor shown remorse”.

13. As the ECHR will be ruling on Cuixart’s case, a follow up from different UN Special Rapporteurs would be very important in giving more visibility to his case in the Council of Europe. It would show that serious violations of fundamental rights and the persecution of defenders are not only present in distant countries; they have also become a problem within the European Union.

14. We call on the Special Rapporteur on the rights to peaceful assembly and association, the Special Rapporteur on the freedom of expression, the Special Rapporteur on the situation of human rights defenders, and the Human Rights Council in general, to pursue efforts to make Spain respect its international commitments, stop political prosecution and to initiate a legal amnesty process that includes all the citizens that have suffered repression and have been imprisoned or judicially investigated since September 2017 in the framework of the political conflict in Catalonia.

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Òmnium Cultural, NGO(s) without consultative status, also share the views expressed in this statement.