

MR CUIXART IS NOT A POLITICAL PRISONER

Rafael Arenas García
Professor of Private International Law

On 19 October “The National” published an article by Mr Jordi Cuixart in which he asserted that he was a political prisoner and made serious accusations against the Spanish Government, while at the same time questioning the quality of democracy in Spain.

It is understandable that anyone in Mr Cuixart’s position—being held in detention, accused of serious offences—might use all means possible in their defence. But such affirmations—which are not only fundamentally untrue but attempt, furthermore, to obscure the seriousness of the events that took place in Catalonia in September and October 2017—cannot be left unchallenged.

Mr Cuixart claims that he is a political prisoner. This is fundamentally untrue. According to the definition of political prisoner agreed by the Parliamentary Assembly of the Council of Europe [Resolution 1900 (2012)], a person deprived of his or her personal liberty is to be regarded as a ‘political prisoner’ if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association; if the detention has been imposed for purely political reasons without connection to any offence; if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of; if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or, if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.

None of the above applies to Mr Cuixart.

Mr Cuixart is not, as he claims, in pre-trial detention for having defended fundamental rights, for having climbed on top of a police car, or for having incited participation in the referendum held on 1 October. As detailed in the court order handed down in March 2018, Mr Cuixart was, and continues to be, the leader of *Omnium Cultural*, a sovereigntist organization that promotes the secession of Catalonia, and in his capacity as such he helped to draft a plan for the unlawful creation of a *de facto* State in the territory of the current Autonomous Community of Catalonia. This process required Catalonia’s public authorities to defy Spain’s Constitutional Court, an act of disobedience which Jordi Cuixart publicly called for (p. 41 of the court order), in addition to a **street-level mobilization that went beyond the organization of demonstrations, to include resistance to public authority.**

This resistance materialized on 20 September 2017 in the convening of a public rally outside the headquarters of the Department of the Vice-Presidency, Economy and Finance of the Regional Government of Catalonia (*Generalitat*), where officers of the court accompanied by police officers were undertaking an investigation in the framework of efforts to identify those potentially guilty of offences of disobedience

with respect to the Catalan authorities' decision to defy the Court rulings prohibiting the holding of the referendum scheduled for 1 October.

The act of convening a public gathering in front of the headquarters of the Vice-Presidency of the *Generalitat* on that 20 September, an act in which Mr Cuixart actively participated, is extremely serious given that its purpose was to intimidate the officers of the court and police officers who were inspecting the premises and to prevent them from undertaking their duties, **surrounding the building of the Department and thus preventing them from leaving during several hours**. In fact it was not until nighttime that Mr Cuixart, accompanied by Mr Sánchez, president of the Catalan National Assembly, asked the people who had assembled outside the Department building to lift the blockade.

Preventing public officials or authorities from undertaking their duties is defined as an offence in the Spanish Criminal Code, and it is this offence of which Mr Cuixart has been accused in relation to the events of 20 September 2017. The details of his participation in the barricading of officers of the court and police officers inside the headquarters of the Department of the Vice-Presidency, Economy and Finance of the *Generalitat* can be found on pages 43 *et seq* of the court decision ordering Mr Cuixart and the other parties involved in the events of September/October 2017 to be put on trial.

As regards his participation in the events of 1 October, Mr Cuixart stands accused, not of having encouraged people to participate in the referendum, but of having organized, as leader of *Omnium Cultural*, and together with Mr Sánchez, president of the Catalan National Assembly, **the illegal occupation of the schools designated as voting centres, once again for the purpose of preventing the police from undertaking their duties**. The court order details how Messrs Sánchez and Cuixart incited groups of people to occupy public buildings (including schools and health centres) in order to carry out the illegal referendum of 1 October and to prevent the police from complying with the court orders to prevent such buildings from being used for the referendum that had been prohibited by the Constitutional Court. The police, moreover, were under orders to seize the material they found at those centres, which would be used as evidence in the ongoing proceedings for disobedience. This is to say, the people occupying the schools not only prevented the police from complying with the court order to close them, but they also harboured evidence required to pursue a criminal investigation.

It is important to stress that the resistance to the police on the part of those occupying the buildings was not solely passive in nature. Over the course of 1 October **several police officers were attacked and wounded by those participating in the occupations Mr Cuixart helped to organize**. The Spanish correspondent of "Le Monde" offered a revealing testimony on this matter, relating how in an interview that took place inside one of the occupied schools, the occupiers explained to her how they had succeeded in ambushing the police by cutting off both the street they were advancing along and the street the police were forced to retreat down.

As mentioned above, preventing the police from undertaking judicial orders is an offence defined in the Spanish Criminal Code, and when there is a concerted, multitudinous and violent action aimed at repealing the Constitution or achieving the secession of a part of Spanish territory, this constitutes the offence of rebellion

described in Article 472 of the Criminal Code. This is what Mr Cuixart stands accused of. Not of championing Catalan independence, and not even of defending the use of unlawful methods to achieve said independence, **but of having organized the blockading of a judicial committee on 20 September 2017 and of having participated in organizing groups who attempted to prevent court orders from being carried out and who injured several police officers; groups who sought through these illegal acts to achieve the *de facto* revocation of the Constitution in Catalonia and the creation of a State in the territory of the current Autonomous Community.**

Evidently, it is during the trial to take place in the coming months that all the matters brought to light during the investigations carried out to date must be proven. The trial must, of course, be carried out with full guarantees, as is customary in Spain, one of the countries to have received the fewest judgments from the European Court of Human Rights. According to the Court's own statistics, the Strasbourg Court has handed down 103 rulings in which it held that at least one violation of the Convention had been committed by Spain. The figures for other large European countries are as follows: Germany, 193; France, 728; United Kingdom, 314; Italy, 1,819. Belgium, another country which Mr Cuixart has held up as an example, has accumulated a total of 171 judgments finding it guilty of at least one violation. This exceeds the figure for Spain, despite Belgium having a population of less than a quarter the size of Spain's.

It is particularly important to highlight this point. **Spain is a full democracy in which fundamental rights and the separation of powers are respected.** All international standards confirm Spain's standing as a full democracy and any accusations that democracy is lacking in our country or that fundamental rights are in jeopardy in Spain cannot go unchallenged because they are quite simply false. Opinions of every kind can be expressed in Spain. This is borne out by the fact that once again the Catalan Executive includes members who are abundantly clear about their secessionist goals. Such a situation could certainly not arise in a number of long-established democracies. **Such tolerance, however, does not mean that we can allow the constitutional order to be attacked with impunity.** If Mr Cuixart is in custody it is because he has been accused of serious offences, as we have discussed. His case, as mentioned above, will be tried by a court in the coming months; and it will be the court that decides on his culpability or innocence. But the indications that he committed the offences of which he stands accused are undeniable; his arrest and detention, therefore, are in no way arbitrary or disproportionate.

In addition, we must not lose sight of the fact that the events of September and October 2017 not only represented an institutional challenge to Spain's constitutional order, but were also perceived specifically as threats and acts of aggression by many citizens who did not share the nationalist viewpoints and were threatened with the loss of their citizens' rights and the revocation of the Constitution in their homeland. **Those citizens were subjected for weeks to the unlawful actions of a public authority, the *Generalitat*; their personal data, including their names, national identity numbers and addresses, were used illegally to create the databases needed for secession; and the schools at which their children studied were politicized and turned into instruments of secession.** When Mr Cuixart tries to present himself as a victim he forgets that during the weeks in which secession was an active possibility, all of Catalonia's citizens, and particularly those who were opposed to nationalism, were also

victims of threatening and intimidating conduct. A state under the rule of law cannot let such actions go unpunished and, therefore, the investigation and legal judgment of such actions cannot be subject to any political bartering, precisely in order to uphold the essential principles and values of the democracy.

From a human standpoint it is regrettable that any person should find themselves in detention; but this situation is the same for Mr Cuixart as for the other 58,000 inmates currently being held in Spain's prisons, of whom over 8,000, like Mr Cuixart, are being held in preventive detention.

Let us hope that the courts hand down a judgment as soon as possible on the accusations brought against Mr Cuixart and the other parties involved in the events of September and October and that each and every one of us accepts that in democratic countries, such as Spain, no political action undertaken outside the law and against the law is legitimate.