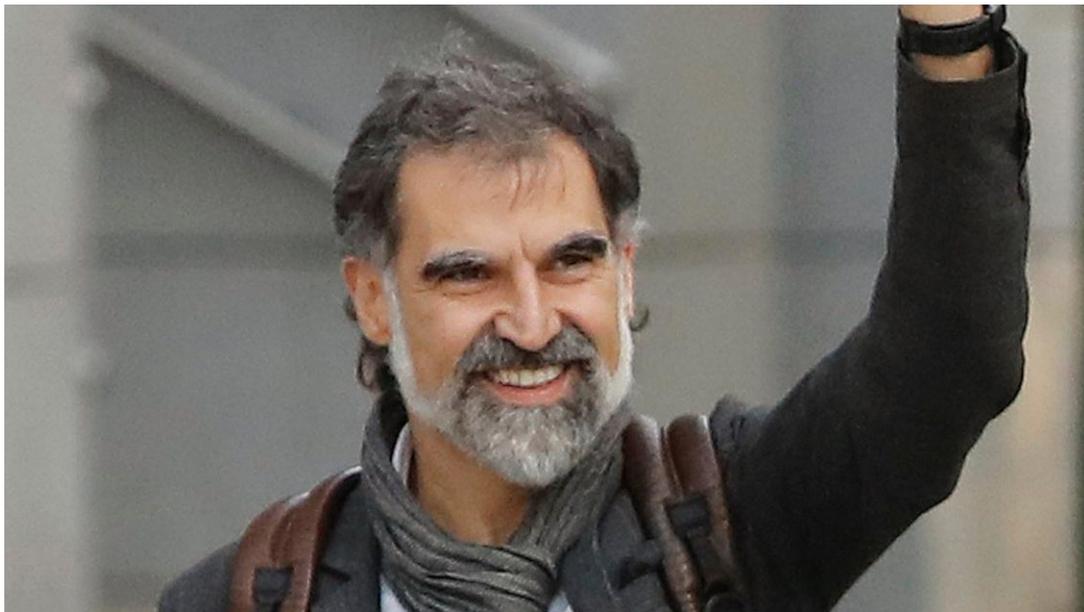


## CASE 13. Jordi Cuixart

Pacifist leader Jordi Cuixart, president of the main Catalan cultural association, is in prison accused of rebellion.



Jordi Cuixart arriving at the Central Court in Madrid on 16 October 2017. // EFE/ Juan Carlos Hidalgo

*“They want for us to give up, that’s why they put us in prison. But this has caused the opposite effect: people are more confident than ever about **the legitimacy of civil disobedience and nonviolent resistance** as the keys to transform the society and to exercise the right to self-determination. We need all the possible strength to continue explaining to the world that we are not facing a trial but an unprecedented farce: “They will never imprison our ideas”.*

(Written by Jordi Cuixart, from prison, to the members of Òmnium Cultural, on the 400 day of his imprisonment).

### Description

Jordi Cuixart Navarro is a businessman born on 22th April 1975. He is the president of Òmnium Cultural since 2015. Married to Txell Bonet, a journalist, they have a son that, when he was arrested and imprisoned, was only 6 months old. On 20 September 2017, together with Jordi Sànchez Picañol, president of the Catalan National Assembly (ANC), they took the lead of a spontaneous popular mobilization located in front of the headquarters of the Catalan Ministry of Economy. People were there to express their rejection to the searches and arrests Spanish police were doing among high-ranking officers of the Catalan administration, as part of the

Spanish government's operation to prevent the celebration of the self-determination referendum scheduled for 1 October 2017 and announced by the Catalan Government.

There were many media that recorded Jordi Cuixart's role in that demonstration, which consisted in ensuring that it remained a non-violent gathering. At 11pm he and Jordi Sànchez called the demonstration off. To do so, they climbed onto a police vehicle, to make sure that people who were far from them could hear their voices.

Two days after, the State prosecutor of the Spanish Central Court (special court heir to the "*Tribunal de Orden Público*", a Francoist court) issued an indictment about the 20<sup>th</sup> September facts, describing them as a "sedition offence". The indictment also states that Jordi Cuixart was the one who instructed the people to keep the mobilisation against the agencies who were trying to prevent the self-determination referendum in Catalonia.

On 16 October 2017 they were called to testify at the Spanish Central Court before Judge Carmen Lamela, who ordered for them to go to prison.

From that moment on, Jordi Cuixart's lawyers have appealed for his release many times, but all of them have been denied. He is still in unwarranted pre-trial detention waiting for a trial.

One month later, on 16 November, the Supreme Court took the case up and Judge Pablo Llarena, in a polemical allocation, became its examining magistrate. He widened the subject of the cause to any activity carried out by Catalan political and social leaders in support of Catalan independence, so that it could be considered as a "general cause". Once completed the preliminary investigation, both the State prosecutor and the private prosecutor – this role was performed by VOX - an extreme right-wing party- qualified the facts as a "rebellion offence", but they differed on the sentences sought. The State prosecutor asked for 17 years of imprisonment and the private prosecutor asked for 74 years, but Spain's legal counsel posed an accusation for sedition involving 8 years of imprisonment.

## Before

Jordi Cuixart was elected president of Òmnium Cultural<sup>i</sup> (OC) in December 2015. This social entity was created in 1961, under Francoist dictatorship, to defend the Catalan language, culture, and nation, which were persecuted by Franco's regime. This presidency was only another step in Jordi Cuixart's path. He was already member of Amnesty International and had been a rebel consciousness objector to compulsory military service, and he was part of OC's board since March 2010.

When he had been inaugurated as OC's president, Cuixart said: "*the entity operates on the basis of reaching agreements, and there are those who bridge the gap when it seems there is nothing more to do, the ones who do all they can in order to reach agreements when it seems that everybody is arguing*". He also stated that he is committed to keeping OC as a "*space of kindness*".

It was precisely in 2010 when Catalonia had seen how a judgement by the Constitutional Courts, at the request of the right-wing Popular Party, cut down all essential points of the constitutionally approved Catalan Statute of Autonomy. The Catalan Statute of Autonomy was regulating Catalan self-government after policy-making progress in Catalan and Spanish governments, and after its approval in a referendum celebrated in Catalonia.

On July 2010, in response to the Statute's impeachment by the Spanish High Court, Òmnium Cultural organized a demonstration under the heading "We are a Nation: We Decide". This

demonstration assembled more than a million people and initiated a series of demonstrations, as massive as peaceful, celebrated every year on 11 September, Catalonia's National Day.

With Jordi Cuixart as president, Òmnium Cultural has launched campaigns such as *"Shared Battles"*, to give value to the historical claims of socially disadvantaged groups, or *"Tomorrow it can be you"* about the threat to citizens' fundamental rights in Spain. This last campaign counts with the support of organizations and NGO's defending civil rights: Fundació per la Pau, Associació Iridia, Centre per la Defensa dels Drets Humans, Novact, Institut Internacional per l'Acció no Violenta i Institut de Drets Humans de Catalunya.

Many media recorded Jordi Cuixart's performance on 20 September. Those recordings appear in the documentary called "20-S" intended to be presented by Mr. Cuixart's defence as evidence of his pacifist attitude during the events of 20<sup>th</sup> September. Mr. Cuixart urged the demonstration's assistants to keep the protest, always in a pacific way and without obstructing the agents who were inquiring into the Catalan Ministry of Economics. Jordi Cuixart, together with Jordi Sanchez, tried to find the way for the agents who were inside the Ministry of Economics to leave the area safely and unobstructed.

### The outcome

Judge Llarena, the investigating magistrate, decided to put together all the political and social actions occurred in Catalonia with the aim of achieving independence from Spain as evidence of rebellion, sedition and funds' embezzlement offences in one general cause. The political and social and even Catalan police forces' leaders who have played an important role in the Catalan process were also included in that case investigated by the Spanish National Court.

Following this, Jordi Cuixart's, who was arrested on 16 October accused of a sedition offence, will be accused of a rebellion offence shared with the Catalan Government and Parliament members in office during the Referendum and the vote about independence in the Catalan Parliament, on 27 October, while Jordi Cuixart was in prison.

A renowned pacifist -he had refused to perform military service and as Òmnium's president he has always maintained and promoted the non-violent nature of the Catalan protests- so the accusing parts have built a case based on a certain interpretation of Mr. Cuixart's statements and those of the other persons accused in regards of the concept of "violence". The prosecutor wrote:

"Our law-maker, when using the adverb that categorizes the action (violently) in the description of the offence type, avoids including in the description of the facts the substantive suggested. Acts violently the one who acts in a violent way, which does not show a content typified by law that fully coincides with acting violently". This type of phrasing, key for the particulars of the rebellion offence, was discredited by the law specialists such as Professor Diego López Garrido, who was once rapporteur of the Criminal Procedure Code's writing.

Many qualified of equally malicious the mention the State prosecution does in its account about the use of the expression "No pasaran!" ("They shall not pass!" a motto of the Republican forces during the Spanish civil war) uttered by Jordi Cuixart during the gathering of the 20<sup>th</sup> September 2017 as a supposed evidence of his violent nature: *"Despite defending the pacific nature of the mobilisation, he also appealed to the determination showed in the Civil War (using the expression "¡no pasarán!").* Regarding the use of this expression by Mr. Cuixart, he himself explained its meaning in a letter addressed to OC's members: *"When the scourge of the far right lays siege to Europe and the world again, the Catalan cause becomes the case about democracy and freedom.*

*After 400 days imprisoned with my colleague Jordi Sànchez, we know that we will maintain the same collective response the fascism found in the twentieth century: ¡No pasarán! They shall not pass! Il fascismo non passera! Sie kommen nicht durch! On ne passe pas! **No pasaran!***

## Violated laws

Jordi Cuixart, as well as other Catalan pro-independence leaders, is accused and imprisoned for defending the Catalan people's right to self-determination and for fostering the exercise of fundamental rights such as the one to freedom of expression and the right to demonstrate in favour of the ideas he defends. Amnesty International, has demanded his immediate release (15-10-2018). This violation of rights has been reported before the UN Working Group on Arbitrary Detention and more recently it has motivated an open letter from the World Organisation Against Torture (22-11-2018).

The Article 96 of the Spanish Constitution equally validates the international treaties signed by Spain; among which are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both covenants contain, in their first article, the people's right to self-determination. And, as a matter of fact, Jordi Cuixart and the other Catalan pro-independence leaders have been imprisoned for defending its exercise. This assessment of the facts has been done by the independent UN rapporteur Alfredo de Zayas.

Jordi Cuixart's defence has lodged many appeals against his unconditional imprisonment, against being imprisoned in a prison more than 500km far from his home until the end of the examination process, against the appointment of the members of the court who will judge him, and against all the difficulties his defence has faced to gain access to the whole content of the preliminary investigation and to present its own evidences.

To be noted that the amendment of the Spanish Penal Code, in force since 2005, decriminalized holding a consultation or a referendum called by an organization that doesn't have jurisdictional capacity to do it.

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