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Spain: Recent developments in Catalonia from 1 October

The excessive use of force by police on 1st October

On the 1st October, Amnesty International observed that law enforcement officials resorted to excessive use of force against voters, peaceful protesters, and individuals who were obstructing a lawful police operation ordered by the High Court of Justice of Catalonia (Tribunal Supremo de Justicia de Cataluña) to prevent the referendum on the independence from being held.

Amnesty International also documented instances where law enforcement officials resorted to a dangerous and inappropriate use of riot control equipment. These include the use of rubber balls by officers of the National Police at the junction of Calle Sardenya and Calle Diputación, in Barcelona. One person suffered serious injuries, and lost the vision in his right eye after a rubber ball was fired at him. The organization also documented the use of riot control equipment and excessive force against people who wanted to cast their vote at the referendum and did not pose any threat to law enforcement officials. For instance, an officer of the National Police hit a woman in front of the Escuela Mediterrània in the Barceloneta district of Barcelona without any apparent reason as she was peacefully waiting to cast her vote. Moreover, Amnesty International documented the inappropriate use of chemical irritants in the village of Aiguaviva, Girona. A Civil Guard agent fired a hand-held spray directly against peaceful individuals who were passively resisting the police operation aimed at seizing the ballot boxes.

Amnesty International has called for an impartial, thorough, independent and effective investigation into all the allegations of excessive use of force. The organization is aware that courts are investigating some of the allegations and calls on the Spanish government to fully cooperate with judicial authorities in the context of these investigations. If the investigation concludes that excessive force was used, those responsible should be subjected to the appropriate criminal or disciplinary procedures. The arbitrary or abusive use of force by law enforcement officers must be treated as a crime. The rights of victims, in particular their right to reparation, including compensation, should be respected.

The prosecution of Carles Puigdemont and other Catalan public officials

On 30 October, the Spanish Prosecutor General (Fiscal General del Estado) filed a complaint to the Audiencia Nacional against the former president of the Catalan government Carles Puigdemont i Casamajó and 13 former ministers of the Catalan government, and to the Supreme Court (Tribunal Supremo) against several former Members of the Catalan Parliament's Bureau (Mesa del Parlament), including its President, Carme Forcadell. According to the Prosecutor General, they are all criminally liable for rebellion, sedition and improper use of funds. The judicial investigations regarding those cases are still open; the charges are provisional and the qualification of the offences has not been determined yet by the courts.

On 2 November, the Audiencia Nacional imposed pre-trial detention on eight of the 13 former Ministers. On 5 November, after a judge of the Audiencia Nacional issued a European arrest

warrant, Carles Puigdemont and four former Ministers were arrested in Belgium. On the same day, Belgian judicial authorities released them on bail. On 9 November, the Supreme Court ordered that the five members of the Catalan Parliament be freed on bail.

On 7 September 2017, the Constitutional Court ruled that the referendum scheduled for 1 October on the independence of Catalonia from Spain was unconstitutional. International human rights law provides no basis on which to challenge the legitimacy or legal reasoning of the Constitutional Court ruling.

It follows from this ruling that the actions of Catalan officials involved in the organisation of the referendum and subsequent declaration of independence on 27 October were ultra vires and, possibly, constituted criminal offences under Spanish law. The actions of Catalan officials exercising their official functions in pursuit of an unlawful referendum were protected neither by the right to freedom of expression nor by any other human right set out in international human rights law.

Amnesty International has not identified the detained Catalan officials as prisoners of conscience, as the organisation uses the term only for those who should not be punished at all because they have been detained solely for exercising their human rights (or because of certain elements of their identity) and that, therefore, they have not done anything that can be legitimately construed as a criminal offence.

In the absence of an accepted definition of the term “political prisoner” in international law and in light of the many possible meanings and interpretations it can have in its everyday usage, Amnesty International as a general rule seeks to avoid its use. It has occasionally been used by Amnesty International as a shorthand descriptive term in cases with a strong political context, but it prefers to avoid the term because of the risk that it will be misconstrued as implying a particular legal status. More specifically, Amnesty International does not use the terms “political prisoner” and “prisoner of conscience” interchangeably and in particular avoids the use of the term “political prisoner” in situations where it may mistakenly invite the inference that those thus described are “prisoners of conscience”.

While Amnesty International recognises that the Catalan ministers and parliamentarians may have committed a legitimately prosecutable offence, the courts must ensure that discretionary prosecutorial powers are not exercised arbitrarily or unreasonably. If, in the courts’ opinion, the charges identified by the Prosecutor General do not satisfy the legal requirements for a specific offence, they must be rejected or revised.

In particular, under article 472 of the Spanish Criminal Code, the crime of rebellion requires the use of violence to declare the independence of a portion of the national territory. In so far as the Catalan government called on people to mobilize and to oppose several lawful police operations before and during the referendum peacefully, it does not appear, on the evidence available to Amnesty International, that the requirement of violence for the offence of rebellion was met.

Amnesty International takes no position on the current detention on remand of the eight former ministers of the Catalan government. The judge of the Audiencia Nacional justified the imposition of pre-trial detention with reference to the requirements under Spanish law: namely elements pointing to their involvement in the offences; the risk of flight, the possible commission of further offences and the compromising of evidence.

However, according to international law and standards, the use of pre-trial detention is justified only where there is no alternative measure which would ensure the interests of justice. Moreover, the measure of pre-trial detention should be subject to regular review by the courts.

Amnesty International will carefully monitor all related criminal proceedings to assess whether fair trial rights and the right to liberty are fully respected.

The prosecution of Jordi Sanchez and Jordi Cuixart for sedition: a disproportionate restriction of their right to freedom of peaceful assembly

On 16 October, a judge of the Audiencia Nacional ordered the pre-trial detention of Jordi Sanchez and Jordi Cuixart, the presidents, respectively, of the pro-Catalan independence organisations the Catalan National Assembly (ANC) and Omnium Cultural. They have been accused of sedition in connection with protests they organized in Barcelona on 20 and 21 September.

As private individuals and presidents of civil society organizations, Jordi Cuixart and Jordi Sanchez had the right to express their views against the ruling of the Spanish Constitutional Court of 7 September. They also had the right to organize peaceful assemblies in support of the referendum and of the independence of Catalonia.

It would appear from the messages they posted on social media as well as some of their statements during the events that Jordi Sanchez and Jordi Cuixart summoned protestors to gather in front of governmental buildings with the intention of obstructing a lawful police operation ordered by a court in Barcelona and involving the searches of several government buildings. It appears that they did not call on protestors to use violence and that the sporadic violent acts committed by protestors, for example the damage of a few police cars, cannot be ascribed directly or indirectly to them as organizers of the protests.¹

While summoning protestors with the purpose of obstructing a lawful police operation may, if proven, be punished, the prosecution of Jordi Sanchez and Jordi Cuixart for a serious crime such as sedition which could carry a penalty of 10 years' imprisonment, and their detention on remand constitute excessive restrictions of their rights to freedom of expression and of peaceful assembly. For this reason Amnesty International calls for Jordi Sanchez and Jordi Cuixart to be released and the charges of sedition to be dropped.

In view of the possible commission of a public order offence, Amnesty International has not identified them as prisoners of conscience. The organization will continue to monitor the criminal proceedings and review the evidence presented against them.

The situation of Carles Puigdemont and other former Ministers of the Catalan government who are currently in Belgium

Carles Puigdemont and all the other public officials who are currently being prosecuted have the right to a fair trial which complies with international human rights law and standards. At this moment Amnesty International has not identified any grounds for concern that, if extradited to Spain, they would be subjected to a trial not complying with international law and standards, but will continue to follow the proceedings against them in order to identify any concerns if they arise.

Public Document

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¹ This sentence was changed on 9 January 2018 to correct an editorial error.

