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SPAIN: Charges for sedition and pre-trial detention against Jordi Cuixart and Jordi Sanchez are excessive

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 charged with sedition under article 544 of the Spanish Criminal Code in connection with protests they organized in Barcelona on 20 and 21 September. The protests opposed and sought to obstruct an operation conducted by law enforcement and judicial authorities in several governmental buildings to prevent the organization of the referendum on the independence of Catalonia on 1 October.

The police and judicial operation conducted on 20 and 21 September was based on a judicial order issued by a court in Barcelona and involved the searches of several official governmental buildings. On 7 September, the Constitutional Court had ruled that the referendum was illegal and against the Spanish Constitution.

Amnesty International does not challenge the ruling of the Constitutional Court and its implementation. However, the rights to freedom of expression and of peaceful assembly cover the possibility for individuals and civil society organizations to express their opinions about the referendum, and independence more generally, at any time, whether individually or collectively, including in the context of public assemblies. Under international human rights law, Spanish authorities must protect the rights of private individuals to express their opposition to the Constitutional Court ruling and to organize peaceful public assemblies in favour of the referendum.

However, international human rights law also permits states to impose some restrictions on the exercise of those rights for certain legitimate aims, such as protecting public order or national security, provided that the restriction is both demonstrably necessary and proportionate to the objective it pursues.

In the decision to impose pre-trial detention, the judge of the Audiencia Nacional argued that Jordi Sanchez and Jordi Cuixart did not simply call for a peaceful assembly, but acted on the basis of a complex strategy and a roadmap to obtain 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. 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

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

Restrictions on the rights of freedom of expression and of peaceful assembly of those seeking to obstruct a legitimate law enforcement operation, even if they do so without the resort to violence, can be justified as necessary to protect public order.

However, under international law, restrictions on expression “must be the least intrusive instrument amongst those which might achieve their protective function.” This requirement of proportionality means that criminal sanctions, in particular those resulting in the deprivation of liberty, will often constitute a disproportionate restriction on the rights to freedom of peaceful assembly and expression.

Jordi Sanchez and Jordi Cuixart have been charged with an offence punishable with 8-10 years’ imprisonment and remanded in custody.

While summoning protestors with the purpose of obstructing a lawful police operation may be punished as a minor public order offence, the prosecution of Jordi Sanchez and Jordi Cuixart for a serious crime such as sedition and their detention on remand constitute excessive restrictions of their rights to freedom of expression and of peaceful assembly.

Amnesty International calls on Spanish authorities to drop the charges of sedition, which is very broadly defined to cover a wide range of acts, and could carry a penalty of 10 years in jail, against Jordi Sanchez and Jordi Cuixart and to put an immediate end to their pre-trial detention.

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