

AMNESTY INTERNATIONAL

Public Statement

AI Index: EUR 45/021/2006 (Public)
News Service No: 311
4 December 2006

United Kingdom -- The Killing of Jean Charles de Menezes: let justice take its course

On 5 December 2006, in the High Court of England and Wales, lawyers acting on behalf of the family of Jean Charles de Menezes will challenge -- by way of judicial review -- the decision of the Crown Prosecution Service of England and Wales (CPS)¹ not to bring criminal charges against any individuals in connection with his killing in 2005. The lawyers will argue that the CPS's decision is flawed; and that there is enough evidence in the case, *prima facie*, to mount a prosecution of individuals for homicide offences.

Amnesty International supports this legal challenge. The organization considers that it is high time to let justice take its course in this case. Nobody is above the law.

On 22 July 2005, the day after a series of serious security incidents took place on the transport system in the capital, Jean Charles de Menezes, a 27-year-old Brazilian man, was killed by officers of the Metropolitan Police Service on board an underground train in London. He was reportedly pinned down, and shot seven times in the head, after being mistakenly identified as a suicide bomber.²

Initial police statements claimed that Jean Charles de Menezes was a suspect linked to the incidents of the previous day. It was also reported that he had tried to evade arrest and that, though it was summer, he had been wearing a thick jacket thought to conceal explosives. However, two days later, on 24 July 2005, the Commissioner of the Metropolitan Police stated categorically that Jean Charles de Menezes had not been involved in any suspicious activities, and that he had been shot dead as a result of a mistake. The police later acknowledged that Jean Charles de Menezes was wearing a denim jacket, and had not acted in any way as to arouse suspicion.

On 17 July 2006, following its completion of the review of the investigation into the circumstances surrounding the death of Jean Charles de Menezes, the CPS announced that it did not intend to prosecute any individual police officer for murder, manslaughter or any other criminal offence in connection with his fatal shooting. The CPS concluded that there was insufficient evidence to provide a realistic prospect of conviction against any individual police officer. In announcing its decision, the CPS stated that:

the two officers who fired the fatal shots did so because they thought that Mr de Menezes had been identified to them as a suicide bomber and that if they did not shoot him, he would blow up the train, killing many people.

In order to prosecute those officers, we would have to prove, beyond reasonable doubt, that they did not honestly and genuinely hold those beliefs. In fact, the evidence supports their claim that they

genuinely believed that Mr de Menezes was a suicide bomber and therefore, as we cannot disprove that claim, we cannot prosecute them for murder or any other related offence.

The CPS concluded that, while a number of those involved had made mistakes in respect of planning and communication, the cumulative result of which had been the killing of Jean Charles de Menezes, nobody had been culpable to the extent necessary for a criminal offence to be made out.

In addition, the CPS stated that a log book recording the incident had been submitted for forensic examination with a view to establishing whether it had been altered and, if so, by whom. However, the experts who had examined the relevant passage could not agree to the standard required whether it had been altered or, if there had been any alteration, who may have been responsible for it. As a result, the CPS maintained that no prosecution of any individual in relation to the log book was possible.

Amnesty International continues to be concerned that, as yet, there has been no full and public scrutiny of all the events leading up to, and the circumstances surrounding, the fatal shooting of Jean Charles de Menezes, including its aftermath.

Under domestic and international human rights law and standards, the UK authorities are obliged to ensure full and public scrutiny of the actions of all state agents and agencies involved so as to ascertain whether the killing was lawful. Amnesty International considers that all the circumstances leading up to the killing, as well as its immediate aftermath, including initial official statements, should be investigated in a manner which strictly complies with relevant international and domestic human rights law and standards.

Therefore, there should be full and public scrutiny of the full circumstances leading up to the shooting, including:

- the terms of the rules of engagement;
- the policy permitting officers to “shoot to kill”, i.e. to shoot in the head, suspects believed to be suicide bombers, reportedly codenamed Operation Kratos;
- the planning of the operation which resulted in the fatal shooting of Jean Charles de Menezes;
- how the police officers involved were briefed and what orders they were given;
- whether a senior officer was contacted before any action was taken;
- whether a sufficient warning was given; and
- whether the action taken by the officers was fully in compliance with human rights law and standards concerning the use of force in the context of law enforcement -- specifically, whether the force used was no more than absolutely necessary and a proportionate response in the circumstances.

In the case of *McCann and Others v United Kingdom*, the European Court of Human Rights considered whether the killing of three individuals by members of UK security forces, in an attempt to stop what they believed to be a terrorist threat, constituted a breach of Article 2 (enshrining the right to life) of the European Convention on Human Rights (ECHR). The Court considered the events leading up to the killings of the suspects and found that the UK had breached Article 2 of the Convention. The Court based its judgment on the following three main points:

- (a) the UK authorities knowingly allowed the terrorist suspects to travel to the site recognized to be the location of the planned attack;
- (b) the UK authorities failed to make sufficient allowances for the possibility that their intelligence assessments (namely that the bomb actually existed and would most likely be detonated via radio transmission) might, in some respects at least, be erroneous; and
- (c) the automatic recourse to lethal force when the soldiers opened fire.

In light of these, the Court ruled that it was not persuaded that the killings in that case “constituted the use of force which was no more than absolutely necessary in defence of persons from unlawful violence within the meaning of Article 2”.

Therefore, Amnesty International urges that, in accordance with the UK’s domestic and international

obligations, the courts be allowed to consider chain of command responsibilities, the nature of the intelligence information on which the operation was based and unfolded, and the actions of all the officers involved in the operation which resulted in the killing of Jean Charles de Menezes.

There was no explanation given by the CPS as to why charges were not brought against people who provided intelligence information and those who gave orders. Furthermore, the CPS's decision not to bring charges against individuals involved in the shooting was based on its assessment of the credibility of individual police officers that they had acted in self-defence.

However, in light of the misleading and/or false statements made in the immediate aftermath of the shooting and of other allegations that have emerged since, Amnesty International considers that issues of knowledge and credibility should be left to a court and jury to assess.

Further, the organization considers that the failure to charge individuals undermines public confidence in the rule of law and the conduct of law enforcement officials.

Background

In July 2006, the CPS announced its decision to prosecute the office of Commissioner of Police of the Metropolis under s. 3 of the Health and Safety at Work etc Act 1974 of failing to provide for the health, safety and welfare of Jean Charles de Menezes. Such a prosecution could result in a financial penalty only, and not in someone being found individually criminally responsible for his death.

In September 2006, the inquest into the death of Jean Charles De Menezes was adjourned indefinitely, pending completion of ongoing criminal proceedings against the Office of the Commissioner of the Metropolitan Police.

Amnesty International does not consider that the prosecution of the Office of the Police Commissioner under Health and Safety legislation would adequately fulfil the procedural obligations stemming from Article 2 of the ECHR and articulated in its case-law. The current criminal prosecution of the Commissioner of Police of the Metropolis, under health and safety legislation, is too narrowly focused for the courts to determine whether the state has violated its obligations under human rights law, specifically Article 2 of the ECHR.

¹The CPS is responsible for prosecuting criminal cases investigated by either the police or the Independent Police Complaints Commission in England and Wales. ²For more information, see *United Kingdom: The Killing of Jean Charles de Menezes*, issued by Amnesty International on 6 September 2006 (AI Index: EUR 45/015/2006); see also www.justice4jean.com; and www.inquest.org.uk.