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FRANCE: DEATH IN CUSTODY OF MOHAMED ALI SAOUD

Amnesty International is concerned about the circumstances surrounding the death of Mohamed Ali Saoud on 20 November 1998 while under police restraint, at Fort-Blanc, Toulon. The following account is based primarily on information supplied by the family of Mohamed Ali Saoud, who joined criminal proceedings as a civil party following concern that the investigation lacked impartiality. It is also based on press reports, medical reports and other legal documentation, including statements made by police, fire and medical officers.

Mohamed Ali Saoud, a 26-year-old French and Tunisian citizen of Tunisian origin, lived with his family, including his mother, two of his sisters and his younger brothers, in a housing estate (*cit *) known as Fort-Blanc in Toulon. His family describe him as a popular figure in the area, known for his enthusiasm for sport and his work as a football coach. However, after returning in 1994 from military service -- during which he had served in the navy -- he fell into a serious depressive illness. His condition deteriorated after the death of his father in April 1997, to the point where he was registered as suffering from an 80 per cent mental disability. He was receiving psychiatric treatment but had stopped taking medication for about three months before his death, reportedly afraid that it was making him put on weight. Shortly before 20 November he had tried, unsuccessfully, to arrange for re-admittance to a clinic, but the clinic had no immediate vacancies and his doctor was away.

According to Mohamed Ali Saoud's family, he became particularly agitated on the morning of 20 November and after an altercation with a neighbour, who complained about the noise he had been making, and who apparently threatened to go and get his gun if he did not calm down, appeared on the ground floor balcony of his home with an iron bar, from his father's tool box, and a baseball bat. He brandished and beat them against a satellite dish and the balcony railing. He then told one of his sisters, Siem Saoud, to call the mosque and the Tunisian consulate. When she told him she could not find the telephone numbers he pulled her onto the balcony, told her to sit down and tied her feet together with a piece of wire. The neighbour with whom he had had an argument called the central police station of Toulon and at about 9.30am two officers arrived on motor bikes, and another patrol in a car. Two or three officers stood beneath the balcony and talked to Mohamed Ali Saoud to try to calm him but he shouted at the officers and demanded to see their identity cards. They reportedly replied: "We're not clowns!" At one point in the exchange with the officers Mohamed Ali Saoud went into the apartment and brought out a large photograph of his father, which he showed to the officers, saying that his father and uncle -- both dead -- "would be arriving in a quarter of an hour". His mother, sister and younger brothers were reported to have several times explained to the officers that he was ill, mentally disabled, and needed to be admitted urgently to hospital. They asked the police to call a doctor so that he could be tranquillized. However, it does not appear that the police sent for any medical assistance and it was only much later in the operation that fire officers called for the emergency hospital ambulance service, the SAMU (*Service d'assistance m dicale urbaine*). Police reinforcements, on the other hand, were sent for by the officers, the total number eventually present at the scene varying,

according to reports, but possibly between 20 and 30.

Several neighbours had gathered below the balcony and were also trying to reason with Mohamed Ali Saoud. Other neighbours looked on from nearby balconies. One of the neighbours, who knew him well, told him to release his sister. He agreed and she climbed over the balcony onto the ground. He then asked his other sister, Yasmina Saoud, to leave by way of the balcony. She did not know why he wanted her to do this and refused to leave her mother, who was unwell and weeping in the bedroom. She stated that he pulled her onto the balcony, knocking her against the railing and “tapped” her twice on the back with the iron bar to try to get her to leave. At this point an officer armed with a “flashball” gun that fires rubber bullets, shouted a warning to him: “Stop or I’ll fire!” Mohamed Ali Saoud, who was described by Yasmina Saoud, still on the balcony, as “terrified” and “shivering with fear”, began to run up and down the balcony. One bullet was then fired from a distance of about 10 metres, but did not hit him. Two other shots were fired, one of which hit him in the abdomen. He disappeared behind the low balcony wall. Although he had been hit, medical help was still not summoned. Some officers then climbed onto the balcony; one was hit on the forearm with the iron bar as he climbed over the railing. A struggle ensued and the iron bar was removed. Mohamed Ali Saoud was now reportedly on his knees, surrounded by officers and in a state of total panic. During a continuing struggle on the balcony he seized one of the police service weapons, a revolver. He held the gun with both hands. While one arm was held trapped against the ground by an officer’s foot, the gun went off three or four times. It was not aimed, but an officer was shot in the toe. In total, three officers were injured before Mohamed Ali Saoud was brought under restraint. They were given first aid by members of the family inside the apartment pending the arrival of the fire officers.

The gun was retrieved and it was at this point, according to the victim’s family, that seven or eight officers began to beat Mohamed Ali Saoud with their fists and with batons, while pulling his hair and shouting insults. Yasmina Saoud claimed that, while her brother’s arms were held behind him by two officers, he was beaten on the head and hands. He was forced face down on the ground and his feet and hands were shackled. His arms were placed above his head. By then it was about 11am. The family, notably Yasmina Saoud and Majhouda Saoud, the victim’s mother, claimed that, despite the fact that Mohamed Ali Saoud had been brought under restraint, they could see from the dining-room that he was still being beaten with batons on the head and back. Although he had been shot in the stomach with a rubber bullet, he was also kicked in the stomach and on the back. Because he was “still moving”, he was held to the ground by three officers, one sitting astride his back with his arms pressed against his shoulders and one knee against his back, by the pelvis, a second with his foot on the victim’s neck and a third holding his ankles.¹ Nail marks were later found on his body and were attributed to the fact that he was crushed against a plank of wood containing nails from a table that had broken in the struggle. The police officers pinned him to the ground in this position for up to 20 or 30 minutes. During part of this time Mohamed Ali Saoud was still agitating and calling for his mother. Up to the time of his death he continued to be held under restraint on the balcony.

The fire service, which administers first aid, had been called at 11.17am to attend to the police officers’ injuries and four fire officers arrived a few minutes later, followed by two

¹“Comme Saoud était allongé face contre terre je l’ai laissé dans cette position et je me suis installé sur lui, lui plaquant les deux épaules à deux mains et l’empêchant de se relever par un genou au creux des reins ...” Testimony of a police officer quoted from the IGPN inquiry, November 1998

others. The sergeant in charge of the five officers reportedly told the IGPN inquiry in November 1998 that when he arrived he asked whether he should give medical care to Mohamed Ali Saoud. The police officers told him it was not necessary but that it should be given to the injured officers inside the apartment. Yasmina Saoud claims that between 11.30-11.35am, she saw that her brother's hands and face were "violet". At about the same time or a little later -- between 15 and 20 minutes after the fire officers' arrival -- one of the police officers reportedly told the sergeant that Mohamed Ali Saoud was "not well". The fire officers then attempted resuscitation. The hospital ambulance service, the SAMU, had been called by the fire officers and arrived shortly after them. A doctor also attempted resuscitation, without success. The death of Mohamed Ali Saoud was officially noted at 12.30pm. Members of the family, although in a state of shock, were immediately taken to the police station for questioning.

An autopsy was carried out on 20 November by forensic doctors of the *Unité de Médecine Légale de l'Aire Toulonnaise* at the request of the prosecutor and in the presence of judicial police officials (OPJ). The autopsy report concluded that the cause of death could not be ascertained from the observations made by the forensic doctors. The report referred to multiple wounds or haematomas and bruises on the head, neck, arms, chest, stomach, wrists and legs. The stomach and small intestine contained blood. Visceral lesions were found to be consistent with "direct shocks or compression of the trunk" ("*...compatibles avec un mode de production par chocs directs ou compression du tronc*"). The autopsy report stated that no fractures had been found but no X-ray examination was made to confirm the absence of fractures.² The conclusion that there were no fractures was in apparent contradiction to a police report which Amnesty International has not seen but which reportedly referred to the existence of a fracture to the head. No photographs were taken of the body by the judicial authorities, although photographs taken by relatives at the mortuary show that the body is covered with the marks of injuries. They also show the marks of shackling on the feet. Parts of the autopsy report were allegedly published in newspapers before they had been made available to the family.

An examination of injured organs of the body (*étude anatomopathologique*) took place on 15 January 2000. This studied the heart, lungs and adrenal glands, in order to determine the cause of death. It observed that injuries to the body could be attributed to "positional asphyxia" ("*une asphyxie de type mécanique*").

A police inquiry was immediately opened by the internal police inspection service, the *Inspection générale de la police nationale* (IGPN). The inquiry interviewed family members, several police officers, the sergeant in charge of the firemen and one of the SAMU doctors, but reportedly did not question the other fire officers or SAMU doctors and none of the neighbours who witnessed the events. The inquiry reportedly concluded that the police officers had acted in legitimate defence against "an individual using an iron bar and a baseball bat". It reportedly found that the blows administered to Mohamed Ali Saoud were proportional to the injuries he had inflicted on the police officers, which were said to include fractures, and justified the fact that he was held pinned to the ground for "about 30 minutes" by the injuries sustained by the officers, the problems of access to medical care and the absence of any medical means of tranquillizing him. The IGPN inquiry was closed four days later, on 24 November 1998 and the report lodged with the judicial authorities on 21 January

²According to an article in the French newspaper *L'Humanité*, 12 April 1999, one of the forensic doctors who carried out the autopsy was asked why X-rays had not been made. He reportedly admitted that this would have been desirable, but there were no available facilities.

1999.

The body of Mohamed Ali Saoud was quickly released for burial by order of the public prosecutor and transported to Tunisia. The family are now concerned that this should have happened before contradictions between the police and autopsy reports were elucidated or before they became aware of the unsatisfactory result of the autopsy and further examinations of the body could take place. They further believe that if photographs, showing the extent of Mohamed Ali Saoud's injuries, had been made immediately available to an investigating judge by the judicial services, a second autopsy would have been ordered and a judicial inquiry would have been opened promptly.

In the event, a judicial inquiry into the circumstances of the death was not opened for about two months, the prosecutor's office having reportedly not found it necessary to notify an investigating judge during this time. Concerned about lack of progress in the case, the family of Mohamed Ali Saoud joined criminal proceedings as a civil party in the first week of January 1999, lodging a formal complaint under Article 221-4 of the Penal Code for "voluntary homicide, committed against a particularly vulnerable person" (*"homicide volontaire commis sur une personne particulièrement vulnérable"*). Not until 14 January did the prosecutor refer the case to the investigating judge on the broad basis of "voluntary or involuntary homicide". The IGPN was then asked to carry out supplementary inquiries. Since the autopsy report had not ascertained the cause of death, the family believed that the IGPN's original inquiry, exonerating the police officers, was conducted too hastily and that its conclusion that the police had acted in legitimate defence was premature. Fearing, therefore, that a new IGPN inquiry would not be impartial, they asked the investigating judge to order that the supplementary inquiry into the conduct of the police be carried out by the *Gendarmerie Maritime* instead of the IGPN, but this request was refused.

A reconstruction of events was carried out on 22 June 1999. Present at the reconstruction were two members of an independent medical team from Marseilles. Owing to the inconclusive results of the autopsy, they had been asked by the family to carry out a further medical examination (*contre-expertise*) in order to confirm or otherwise the conclusions of the first. These findings are not yet available. The police officers, who remain at their posts, have reportedly not yet been formally examined (*mise en examen*) by the investigating judge in connection with the death. The judge is possibly awaiting the results of the second medical report.

In November 1999 a complaint was filed by the family's lawyer with the European Court of Human Rights. The complaint requests the court to examine the case on the grounds of the right to life, the prohibition of torture and the right to a fair trial (Section 1, Articles 2, 3 and 6 of the European Convention on Human Rights).

Article 10 of the Code of Police Deontology states that any arrested person is "placed under the responsibility and protection of the police". Police officers must refrain from "all violence or inhuman or degrading treatment". Officers who witness any such treatment must take steps to end it or bring it to the authority of a competent authority. "*Police officers who have custody of a person needing special care must call for medical care and, should the occasion arise [i.e. before the arrival, or in the absence of, a doctor], take measures to protect the life and health of that person.*"³ [Emphasis added].

³"*Toute personne appréhendée est placée sous la responsabilité et la protection de la police; elle ne doit subir, de la part des fonctionnaires de police ou de tiers, aucune violence ni aucun traitement inhumain ou dégradant. Le fonctionnaire de police*

All reports about this case point to the fact that the police operation to bring Mohamed Ali Saoud under control was a difficult one. The police believed that his mother and sisters were in danger and police officers themselves sustained injuries. However, it is the view of Amnesty International that the operation was difficult precisely because Mohamed Ali Saoud was a person in need of “special care” under the terms of Article 10 of the Code of Police Deontology. Amnesty International believes that the case raises a number of serious questions in relation to this article. In particular the organization is concerned by reports that, although family members had warned police officers at the outset that Mohamed Ali Saoud was registered as mentally disabled and in urgent need of medical attention -- and therefore “particularly vulnerable” -- no efforts were made by police officers to summon medical help for Mohamed Ali Saoud, either before, during or after arrest. Again, although a large number of officers were present -- on the balcony, in the apartment or in the immediate vicinity of the apartment -- and were made aware of, and able to witness, his demented state and medical requirements, no medical help appears to have been called after Mohamed Ali Saoud was shot in the abdomen with a rubber bullet, despite the consequent risk of internal bleeding. When, towards the end of the three-hour operation -- and well after Mohamed Ali Saoud had been placed under restraint -- fire officers were called, they were reportedly told to attend to the injured police officers but not to Mohamed Ali Saoud. This meant that another -- possibly vital -- 15-minute delay took place during which he could have received medical attention but did not. The apparent failure to summon medical help before it was too late would seem of crucial importance in view of the findings of the preliminary IGPN inquiry, according to which the length of time during which Mohamed Ali Saoud was held under restraint (up to 30 minutes) was partly justified by the lack of medical assistance.

Amnesty International also believes that there should be a full investigation of the allegations that Mohamed Ali Saoud was ill-treated while under restraint - in other words, that he was repeatedly beaten and kicked after his hands and feet were shackled and he was lying face down on a plank of wood, and therefore under the full control of the officers. It is equally important to ascertain whether the force used against him to restrain him, and the length of time he was subjected to such restraint was a factor in his death.

In addition, Amnesty International is concerned by the apparent inertia of the prosecutor in bringing the case to the attention of an investigating judge and the apparent failure of the investigation so far to determine the exact cause of death or to allow for the supplementary police inquiry to be handled by a different law enforcement agency than the one which carried out the first inquiry. It is also concerned by the continuing reported problems faced by the civil party as regards receiving information about the general progress of the inquiry.

Anyone wishing further details relating to Amnesty International’s concerns in France should consult the following recent publications:

↪ *Amnesty International Concerns in Europe: January - June 2000* (AI Index: EUR 01/03/00);

qui serait témoin d'agissements prohibés par le présent article engage sa responsabilité disciplinaire s'il n'entreprend rien pour les faire cesser ou néglige de les porter à la connaissance de l'autorité compétente. Le fonctionnaire de police ayant la garde d'une personne dont l'état nécessite des soins spéciaux doit faire appel au personnel médical et, le cas échéant, prendre des mesures pour protéger la vie et la santé de cette personne". Article 10, Code de Déontologie de la Police Nationale, Décret N° 86-592. (The annotated Code, published 1991, specifically explains that the phrase “le cas échéant” refers to the absence of a doctor or the period before the doctor’s arrival).

- ↵ *Amnesty International Concerns in Europe: July - December 1999* (AI Index: EUR 01/01/00);
- ↵ *Amnesty International Report 2000*.