

17 May 2000

USA: Ruling limiting police use of pepper spray -- a positive step

The recent ruling restricting police use of pepper spray to subdue nonviolent protesters is a positive step toward eradicating a potentially lethal practice, Amnesty International said today.

Earlier this week the UN Committee against Torture criticized the USA about "the number of cases of police ill-treatment of civilians...". The misuse of pepper spray by US police was one of a number of concerns raised by Amnesty International in its report to the Committee.

The San Francisco federal appeals court ruled on 4 May that the use of Oleoresin Capsicum (OC) spray (also known as "pepper spray") may in some circumstances constitute an unconstitutionally "unreasonable use of force".

"However, due to the risks associated with pepper spray, its use is questionable in any circumstances," Amnesty International stressed.

The ruling does not ban the use of OC spray, but indicates that there are limitations on when it is appropriate for use by law enforcement agents.

The ruling stemmed from incidents in 1997 in which Humboldt County law enforcement officials in California swabbed liquid OC directly into the eyes of non-violent anti-logging protesters and sprayed the caustic chemical into the protesters' faces from inches away. Amnesty International at the time condemned the action as "tantamount to torture".

After a federal judge had dismissed a civil rights suit brought by the protesters on the ground that the procedure caused only "transient pain", a three-judge panel revived the case. They noted that "The evidence suggests the protesters suffered excruciating pain" from the use of the pepper spray, and because the protesters posed no danger to anyone at the time, a jury should decide if that amount of force was unreasonable under the circumstances. The 4th Amendment to the US Constitution allows police to use only as much force as is "reasonable" to make an arrest.

"This ruling should clearly signal to law enforcement officers that it is no longer acceptable to use pepper spray in such a calculated and deliberate way to inflict pain as a way of subduing demonstrators who pose no threat," Amnesty International said.

"We now hope that it will influence police practises not only in California, but in the USA as a whole."

Amnesty International is renewing its call on the US federal authorities to establish an independent nationwide review of the use of OC spray by law enforcement and correctional agencies.

"All agencies should either cease using OC spray or introduce strict guidelines and limitations on its use, with clear monitoring procedures," the organization said. To Amnesty International's knowledge no such review has yet taken place and monitoring continues to be inadequate.

Background

International law encourages the development of non-lethal weapons but it states that such weapons should be "carefully evaluated" and their use "strictly controlled". Yet, the use of OC spray by police agencies in the USA is not governed by a regulatory agency. Amnesty International has

long expressed concern at the lack of consistent monitoring of the use of OC spray by US law enforcement agencies and at its inappropriate use in the case of non-violent demonstrators.

In December 1999 Amnesty International wrote to the Seattle authorities to express concern about reports of police using large quantities of OC spray and tear-gas indiscriminately against non-violent protesters, residents and bystanders during the World Trade Organization demonstrations. Some non-violent protesters who refused to leave police buses on arrival at Seattle detention centres alleged that police officers pulled back their eyelids and put pepper spray or gel into their eyes, nose and mouth. Another protester alleged that he had pepper foam deliberately rubbed into his eyes with a cloth after being strapped into a restraint chair in King County jail.

Since the early 1990s, more than 90 people in the USA are reported to have died in police custody after being exposed to OC spray. While most deaths have been attributed by coroners to other causes, such as drug intoxication or positional asphyxia, or are unexplained, there is concern that OC spray could be a factor in some cases. For example, just a week ago a 30-year-old man from Colorado Springs died after deputies at a country jail (El Paso Criminal Justice Center) tried to control him with pepper spray. Andrew J. Spillane, who was in custody on suspicion of drug-related offences, began having problems breathing after being sprayed; he died a few hours later.

ENDS.../

For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566
Amnesty International, 1 Easton St., London WC1X 0DW