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SPAIN

THE FATAL SHOOTING OF MIRIAM GOMEZ CUADRADO BY A CIVIL GUARD OFFICER

Amnesty International is concerned at the fatal shooting of Miriam Gómez Cuadrado by a Civil Guard officer (*Guardia Civil*) in Seville on 10 April 1999. Miriam Gómez Cuadrado was travelling as a passenger in a car driven by a friend. The use of force in this case was reported to be seriously disproportionate to the objective the officer was trying to achieve.

The fatal shooting of Miriam Gómez is one of a number of recent reports of such shootings by law enforcement officers in disputed circumstances. Many of these reports are of concern to Amnesty International because they appear to involve an excessive and disproportionate use of force. (See, for example, Amnesty International document *Concerns in Europe: January-June 1999*, AI Index EUR 01/02/99).

The following account is based on several reports in Spanish newspapers as well as on legal sources.

Miriam Gómez and her friend, Beltrán Sánchez Pérez, were returning home to Bellavista (Seville) from a discotheque in a Renault-9. It was 5 am. Beltrán Sánchez, who was driving, did not have a driving licence or insurance and was trying to escape a Breathalyzer test. Two Civil Guards pursued the Renault-9 for four kilometres before one of them, a shooting instructor and head of the traffic division of Dos Hermanas (Seville), aimed his weapon at the car and fired a bullet which pierced the left rear door and struck the frame of the driver's seat before entering the passenger's left arm and chest, damaging the lungs and heart. Miriam Gómez died almost instantaneously.

The officer who fired the shot was suspended from service and he reportedly remains in conditional liberty pending the result of a judicial inquiry. *An internal Civil Guard inquiry was also opened. The Regional Government (Junta de Andalucía) removed him from a teaching post at the Public Security Academy (Escuela de Seguridad Pública).*

The officer reportedly maintained that he had fired at a back tyre to stop the car. He said he had acted in legitimate defence because the Renault was a danger to traffic. However, while agreeing that Beltrán Sánchez had made "risky manoeuvres" to escape the police vehicle, the internal inquiry reportedly referred to "well-founded doubts" that a weapon should have been used in such

circumstances. According to Article 5.2 of the *Ley Orgánica 2/1986 de los Cuerpos y Fuerzas de Seguridad del Estado*, arms must only be used where there is a reasonably serious risk to the life or physical integrity of an officer or to that of third persons, and a circular of 13 May 1998 on the use of official cars, issued by the *Dirección General de la Guardia Civil*, states that officers should not give chase where danger could be caused to themselves or to others.

The officer who fired the fatal shot was subsequently charged with "homicide by negligence" (*homicidio imprudente/homicidio por imprudencia*) under Article 142.1 and 2 of the Penal Code. This carries a prison sentence, on conviction, of between one and four years. The public prosecutor (*fiscal*) attached to the Seville court (*Juzgado de Instrucción n° 6*) has requested a two-year prison term on the grounds that the officer committed an act of carelessness endangering life and "devoid of the most basic demands of timeliness, appropriateness and proportionality..." ("*faltando a las mínimas exigencias de oportunidad, adecuación y proporcionalidad...*")¹.

The trial is expected to take place between 27-28 June 2000.

RELEVANT PROVISIONS IN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The right not to be arbitrarily deprived of life is a fundamental norm of international law. This right is proclaimed in the Universal Declaration of Human Rights and enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR). All States Parties to the ICCPR are legally bound to implement this right.

The Human Rights Committee, an expert body which oversees implementation of the ICCPR, has adopted a series of General Comments which help to understand States Parties' obligations under individual articles of the ICCPR. Some of these General Comments relate directly to Amnesty International's concerns in this report.

¹The lawyer representing the family of Miriam Gómez had appealed for the officer to be charged with the more serious crime of "homicide" but the appeal was rejected.

a) The right to life

General Comment 6² on the right to life states that "the protection against arbitrary deprivation of life which is explicitly required [in the ICCPR] is of paramount importance". States Parties should take measures to - *inter alia* - "...prevent arbitrary killing by their own security forces". The law must "...strictly control and limit the circumstances in which a person may be deprived of his life by such authorities".

The international community has elaborated measures bearing on the rights guaranteed by the ICCPR. These measures were adopted by consensus of the UN General Assembly without dissenting vote.

The UN Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly in 1979, emphasizes the exceptional nature of the use of force, stating in Article 3 that force may be used "...only when strictly necessary and to the extent required for the performance of their duty". More detailed guidelines are set out in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders on 7 September 1990.

Principle 4 states that law enforcement officials "...shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means *remain* [emphasis added] ineffective or without any promise of achieving the intended result". Whenever the lawful use of force and firearms is unavoidable officers shall, under Principle 5:

"a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;"

"b) Minimize damage and injury, and respect and preserve human life;"

² General Comment 6 on Article 6 of the ICCPR adopted by the Human Rights Committee (Sixteenth Session, 1982)

Principle 9 states that "...officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury" or to prevent "...a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger" and "only when less extreme means are insufficient to achieve these objectives". The article continues: "In any event, intentional lethal use of firearms may only be made when *strictly unavoidable in order to protect life*" [emphasis added].

In 1989 the UN General Assembly endorsed the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions³ which states in Article 1 that "[s]uch executions shall not be carried out under any circumstances including...*excessive or illegal use of force by a public official* [emphasis added] or other person acting in an official capacity". The section on investigation is important in relation to Spain. In particular, it requires "...thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". The Principles also stipulate that "Families of the deceased and their legal representatives shall be informed of, and *have access to* [emphasis added], any hearing as well as to all information relevant to the investigation..." and that "[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made *public immediately* [emphasis added] and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law".

RELEVANT PROVISIONS IN SPANISH LAW

Law enforcement officers in Spain are obliged to abide by the principles of "*congruencia*" (congruity), "*oportunidad*" (appropriateness) and "*proporcionalidad*" (proportionality). In other words, law enforcement officers may not use force which is excessive or disproportionate to the objective to be achieved in a particular situation. The relevant provisions in Spanish law are governed by Article 5 of the *Ley Orgánica 2/1986 de los Cuerpos y Fuerzas de Seguridad del Estado*. According to Article 5.2 of the law, arms may only be used where there is a reasonably serious risk to the life or physical integrity of an officer or to that of a third person, or a grave risk to the safety of citizens. In addition, a circular of 12 May 1998 on the use of official cars, issued by the *Dirección General de la Guardia*

³ Adopted by the UN Economic and Social Council on 24 May 1989 in resolution 1989/65

Civil states that officers should not give chase where danger could be caused to themselves or to others.⁴

⁴"...cuando se pretenda dar alcance en vias publicas a presuntos delincuentes, no se realizara persecucion alguna que ponga en peligro la seguridad de los demas usuarios o la suya propia, sino que los pondra en conocimiento de la central de servicios de la que dependa para la activacion del correspondiente dispositivo, manteniendo, mientras tanto, el seguimiento a una velocidad acorde con las normas de circulacion".