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FRANCE: FATAL SHOOTING OF CHILD REFUGEE - APPEAL AGAINST RULING THAT POLICE OFFICER WHO SHOT TODOR BOGDANOVIC SHOULD NOT BE PROSECUTED

On 18 September 1997 an appeal court in Aix-en Provence (*Chambre d'Accusation de la Cour d'Appel d'Aix-en-Provence*) will consider an appeal against a judicial ruling that there were no grounds for prosecution (*non-lieu*) of a police officer who shot and killed eight-year-old Todor Bogdanovi_. The child was a member of a convoy of Roma from a village in Serbia who, in August 1995, were crossing the border between Italy and France to seek asylum in France. Amnesty International is concerned that the ruling, made in December 1996 by the investigating judge of Nice, not only contradicts the findings of the initial police inquiry but also the police rules regarding use of firearms and the Penal Code provisions on the limits of legitimate self-defence. It is also concerned that at least one key witness to the killing was not examined by the judge. Amnesty International is urging the new Minister of Justice to ensure that a full and fair investigation is held into the fatal shooting of Todor Bogdanovi_ and that, if justified, the police officer is prosecuted. The organization has also reiterated its concern that the case falls into a pattern of shootings and killings in which law enforcement officers are using excessive and sometimes lethal force in violation of standards of international law.

Background

In November 1995 Amnesty International expressed concern to the French authorities about the fatal shooting of eight-year-old Todor Bogdanovi_ by a border police officer (AI Index: EUR 21/04/95). The organization stated that it believed the case fell into a pattern of shootings and killings in which law enforcement officers were using excessive and sometimes lethal force in violation of standards of international law. It also believed that some of these

shootings and killings may be contrary to French law and police regulations regarding the use of arms by police officers.

On 20 August 1995 at about 3.30 a convoy of four cars and two trailers approached two border officers on a small, remote mountain road in southern France, near the Italian frontier, leading to the village of Sospel. The convoy contained about 43 Roma from Novi Pazar in the Muslim region of Sandjak, Serbia, a village close to the Bosnian border. The Roma were refugees, having left Serbia with the intention of seeking asylum in France or Germany. In January 1995 the UN High Commissioner of Refugees (UNHCR) had drafted a special note expressing its concern at the deteriorating human rights situation in Sandjak.

The two border police were members of the *Direction centrale du contrôle de l'immigration et de la lutte contre l'emploi des clandestins* (DICCILEC) which had replaced the *Police de l'air et des frontières* (PAF). The new department was formed in a climate of growing tension in France with regard to terrorism and illegal immigration. The officers claimed that as the convoy approached they attempted to stop it. They maintained they were in uniform and had set up a roadblock with a warning light. When the first two cars failed to stop an officer fired three shots, one at the first car with a rubber bullet and two at the second car with metal bullets. The bullets fired at the second car, driven by Todor's father, hit the rear window at very close range. Todor, who had been sleeping on the rear window shelf of the second car, was killed.

A ballistics report subsequently confirmed that the police officer had fired at the vehicle from a distance of 1.80 metres, after the vehicle had already passed, and that the shot had been fired at shoulder level.

Contrary to the police officer's statements, the Bodanovi_ brothers, who were driving the first two cars in the convoy, said they saw no warning light and no uniforms, but only "shadows" and thought they were bandits. The officer claimed to be acting in legitimate self-defence (the concept of *l'gitime d_fense*¹).

An internal police inquiry was immediately opened by the *Inspection g_n_rale de la police nationale* (IGPN), the General Inspectorate of the National Police. The IGPN was unable to establish that the police officer had acted in self-defence and was reported to have concluded that the two shots aimed at the second car had been fired prematurely (*coups de feu intempestifs*). On 21 August 1995 a judicial inquiry was opened under the investigating judge of the tribunal of Nice. The officer was placed under investigation on a charge of manslaughter (*coups et blessures volontaires ayant entraîné la mort sans intention de la donner*) and freed under judicial control.

¹ "... in specific circumstances French law allows the use of force [by law enforcement officers]. However, it requires that, where force is used, the means should be in proportion to the severity of the threat or attack. International law emphasizes especially the importance of proportionality in judging whether the use of force is legitimate and further states that intentional lethal use of firearms may only be made when strictly unavoidable, in order to protect life" - *France: Shootings, killings and alleged ill-treatment by law enforcement officers* (AI Index: EUR 21/02/94).

In the aftermath of the fatal shooting of the child a number of conflicting arguments were attributed to various government and judicial authorities. On 22 August, a day after the opening of the inquiry, the former Minister of Justice, Jacques Toubon, was reported to have declared that the police involved in the case had carried out their work normally - a statement publicly deplored by the *Syndicat de la Magistrature* (SM) because it appeared to state that the police involved in the case had acted properly when the internal police inquiry had already referred to premature or overhasty firing of a gun and because a judicial inquiry was pending. But the Minister's statement was repeated by the Prefect of the Alpes-Maritimes region, who reportedly said the police "were doing their work", and that policemen were accustomed to firing their weapons "if they felt threatened and were in a situation of legitimate defence." On the other hand, the deputy prosecutor of Nice was quoted as saying: "The argument of legitimate defence cannot be upheld without reservation ... Legitimate defence cannot be taken for granted, it has to be proved. Now, according to the preliminary findings of the *Inspection générale de la police nationale* it seems that the gunshots were premature."²

The French Penal Code (Art. 122-5 and following articles) enshrines the jurisprudential principle of proportionality between the act of defence and gravity of the attack. The French police training manual precludes the use of a firearm under the reported circumstances of this case because the criteria for legitimate defence were not present. The manual states that "If there is the slightest possibility of the police officer avoiding, without serious consequences for himself or others ... an illegal attack ... he must opt for that solution rather than use his weapon. For example, if a vehicle is driven intentionally at the officer and he has the time and is physically able to move aside --- he should do so rather than use his weapon. Once the vehicle has passed, the criteria for legitimate defence no longer existing, the use of the weapon by the officer is forbidden."³

The members of the convoy applied at once for asylum. The immediate family of Todor Bogdanovi_ were given permission to remain in France until mid-December but on 21 August, just a day after the killing of the child, the Prefect of the Alpes-Martimes issued orders expelling all the other Roma across the border before their requests for asylum could be fully examined. Among those expelled was at least one key witness to the killing, who had not been interviewed by the judge. On 2 June 1997 France's highest legal body, the

² "... On ne peut pas accrédi-ter la thèse de la légitime défense sans réserve ... La légitime défense ne se présume pas, elle se prouve. Or, d'après les premiers éléments de l'enquête de l'Inspection générale de la police nationale, il semble qu'il a eu des coups de feu intempestifs." (*Le Monde*, 23 August 1995).

³"S'il existe pour le policier la moindre possibilité, sans conséquence grave pour lui-même ou pour autrui ... l'attaque injuste --- il doit opter pour cette solution plutôt que d'utiliser son arme. Par exemple, si un véhicule se dirige délibérément sur le policier et que celui-ci a la possibilité matérielle et le temps de s'écarter --- il doit privilégier cette solution plutôt que d'utiliser son arme. Une fois le véhicule passé, les conditions de la légitime défense n'étant plus réunies, l'usage de l'arme par le policier est à proscrire." - *Gestes et techniques professionnels d'intervention* - Direction du Personnel et de la Formation de la Police

Council of State (*Conseil d'Etat*), annulled the expulsion orders as illegal. It ruled that in expelling the Roma the Prefect had exceeded his powers.

In November 1996 the former Minister of Justice reportedly intervened directly in the case for a second time to request the public prosecutor (*Procureur G_n_ral*) to rule that there were no grounds for prosecution (*non-lieu*), and in December 1996 the investigating judge ruled accordingly, stating that the officer could legitimately have believed that his life was in danger. For the reasons given above, Amnesty International is concerned at this ruling, which also deprived the child's family, who had presented a complaint to the judge as civil parties, of a trial.

In July 1997 the United Nations-based Human Rights Committee considered the third periodic report on the French Government's implementation of the UN Convention on Human Rights. The Committee expressed concern at the treatment and expulsion of refugees. The Committee was also seriously concerned by allegations of ill-treatment by law enforcement officials, including unnecessary use of firearms leading to death, and pointed out that the risk of such ill-treatment was much greater in the case of foreigners and immigrants.

As stated above, an appeal against the *non-lieu* ruling is being heard by the *Chambre d'Accusation de la Cour d'Appel d'Aix-en-Provence* on 18 September. Amnesty International is urging the Minister of Justice to ensure that a full and fair investigation into the disputed circumstances of the killing of Todor Bogdanovi_ is carried out and, if justified, that the police officer is prosecuted. It also urges the French authorities to ensure adequate compensation to the family of Todor Bogdanovi_ in the event of the police officer's prosecution.

