

[EXECUTIVE SUMMARY]

- REPORT -

STOP RUBBER BULLETS



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This report is based on the need to draw **attention to and understand the effects caused by the use of rubber bullets in Spain between 2000 and 2020**. Despite the existence of various publications and international studies on the subject, analysis of the use of these projectiles by state security forces and bodies continues to present challenges, given the difficulties in accessing relevant information through public consultation channels, on supposed grounds of national security and public safety alluded to by Spanish authorities.

Nevertheless, since 1976, and until the most recent established case of serious injury in 2017, rubber bullets have left at least **23 people dead and several dozen wounded, many of them seriously**¹. In the course of researching this report, 22 such cases have been recorded in the contexts of protests and football matches in the past 20 years alone. Further to this tally are the 14 deaths and 4 wounded among those who sought to swim to the Tarajal coast (Ceuta) on the 6th of February 2014, and who were shot with rubber bullets by the Spanish Civil Guard in order to prevent their entry to Spanish national territory.

This research takes into account, from a human rights perspective, international and national regulatory frameworks, technical specifications of the weaponry and ammunition used, the physical and psychological impacts of their use, and the difficulties faced in investigating events. To this end, we have compiled the experiences and campaigning activities of various victims' organizations (such as Stop Bales de Goma and Ojo con tu Ojo) and grassroots movements that have fought for a ban over the years, as well as the testimony of both national and international experts. **The aim is to contribute to public debate, highlighting that this type of weaponry - due not only to its unpredictability and non-targetable use, but also its potential to cause harm - does not comply with international standards concerning the use of force, and consequently its prohibition is recommended.**

¹. Ter García, *Cronología de las balas de goma: al menos 44 heridos graves y 23 fallecidos* (El Salto, 16th of October 2018), <https://www.elsaltodiario.com/balas-de-goma/cronologia-balas-de-goma-al-menos-35-heridos-graves-y-23-fallecidos>

CHAPTER 1

International legal standards regulating the use of rubber bullets



Jordi Borràs

1.1. The use of force in law enforcement

The use of force by state security forces and bodies is limited by international human rights law, contained in:

- **Code of Conduct for Law Enforcement Officials** (1979)
- **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** (1990)
- **Guidance on Less-Lethal Weapons in Law Enforcement** (2020)

Within this international legal framework, the use of force is to be governed by the following principles:

- The **principle of legality**, which stipulates that the use of force must be regulated by domestic law and administrative regulations in accordance with international law.
- The **principle of necessity** supposes that force is only to be used when there is no alternative. In addition, such use should be ceased as soon as it is no longer needed. Depending on the circumstances, the unnecessary or excessive use of force may even constitute mistreatment or torture.
- The **precautionary principle** stipulates that all necessary precautions must be taken during police operations and interventions so as to avoid or, at least, reduce the risk of resorting to force, thus minimizing the severity of any injury that may be caused by doing so.
- The **principle of proportionality** obliges an absolute limit to the tolerable level of force which may be exerted in response to the threat faced while upholding law and order.
- The **principle of non-discrimination**, established by UN Guidance on Less-Lethal Weapons, requires that, in the performance of their duties, law enforcement officials do not discriminate against any person on the basis of race, ethnicity, colour, sex, sexual orientation, language, religion, political or other opinions, national or social background, disability, property, birth, or other similar criteria.

- The **principle of accountability** maintains that States have an obligation to hold law enforcement officials accountable for their actions, including any decision to use force. To guarantee its completion, the State must establish sufficiently independent mechanisms of internal accountability.

These international regulations are assumed as a binding part of national legislation for member States, insofar as they derive from international principles, practices and treaties ratified by the Spanish state.

1.2. The use of force in upholding law and order, and the right to peaceful assembly and protest

– The UN Guidance on Less-Lethal Weapons establishes that the fundamental human rights of the participants in an assembly must be respected and protected, even if the demonstration is considered illegal by the authorities². It also underlines that **state security forces and bodies must bear in mind that the deployment of “less-lethal” weapons can escalate tensions during demonstrations.**

– **The use of “less-lethal” weapons cannot be made automatically or indiscriminately.** The state must avoid the use of force during peaceful protests and ensure that, should the use of such force be absolutely necessary, no one is subjected to excessive or indiscriminate use of said force³. Consequently, **in accordance with the provisions of the United Nations, “less-lethal” weapons cannot and should not be used to disperse a demonstration.**

– The prohibition of torture and ill-treatment is binding in all circumstances, even when illegal or violent acts take place.



Archivo Revista ARGIA

2. Human Rights Council, *Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66)* (United Nations, 4th of February 2016), paragraphs 13-17 and 25, available online at: <https://undocs.org/es/A/HRC/31/66>

3. *Ibid*, paragraph 52, available online at: <https://undocs.org/en/A/HRC/31/66>. See also Resolution 25/38 of the Human Rights Council, paragraph 9.

1.3. From the concept of "non-lethal" weapons to that of reduced lethality

- "Less-lethal" weapons, or weapons of reduced lethality, are a type of weaponry that, in expected or reasonably foreseen use, carries a reduced risk of causing death or serious injury than conventional firearms. **A diverse array of weaponry is included within this typology:** police batons, manually or remotely deployed irritant substances (tear gas), electric weapons (tasers), kinetic impact projectiles, stun guns, water cannons or weapons, and acoustic equipment.
- The purpose of the development of this type of weaponry was to increasingly restrict the use of force which could cause injury or death, thus the denomination "non-lethal". However, **in practice, this has led to an expansion of the situations in which the police can respond using potentially lethal weapons**⁴. As Amnesty International states, the use of some of these weapons has increased, not reduced, the risk of injury.
- **The fact that the international community, nation states and their police forces have insisted on labelling this type of weaponry as "non-lethal" has in fact led to an underestimation of its potential lethality, and to an underappreciation of its associated risks.** It was not until 2018 that the international community abandoned the concept of "non-lethal" weapons and replaced it with that of "reduced lethality", when a resolution of the Human Rights Council (38/11) referred to this type of weaponry as "less-lethal"⁵, accepting scientific warnings published over the last 50 years concerning its lethal potential⁶.

1.3.1. Kinetic impact projectiles (KIP)

1.3.1.1. Technical description of KIP

- Kinetic impact projectiles (KIP), the group of "less-lethal" weapons to which the rubber bullets used in Spain belong, encompass all ammunition that is intended to transfer kinetic energy from the weapon to the body of the person fired upon, with the aim of causing blunt force or non-penetrating trauma. However, **forensic medical and ballistics evidence shows that these types of weapons can kill, and have a high probability of maiming or seriously injuring those who are hit.**



⁴. Javier Velásquez, Catalina Fernández y Scott A. Reynhout, *¿No letales? Un análisis criminológico, criminalístico y jurídico sobre los peligros de los proyectiles de impacto de energía cinética*, (Chile: Política criminal 16, no. 33, 2021).

⁵. Human Rights Council, *Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests* (United Nations, 29th of June 2018), point 5, Paragraph 15, available online at: <https://undocs.org/es/A/HRC/38/L.16>

⁶. Javier Velásquez, Catalina Fernández y Scott A. Reynhout, *¿No letales? Un análisis criminológico, criminalístico y jurídico sobre los peligros de los proyectiles de impacto de energía cinética*, (Chile: Política criminal 16, no. 33, 2021).

– The main purpose of KIPs is to disable or dissuade a person from continuing to carry out a given course of action. The incapacitation of the individual is sought via the pain felt upon impact of the shot. This technique has been named *pain compliance*⁷. Additionally, **KIPs allow state security forces to keep their distance from the individuals and groups they wish to control.**

– **Kinetic energy projectiles have proven to be potentially lethal weapons.** The Omega Research Foundation's study of crowd control technologies emphasized that any kinetic impact weapon with an energy greater than 122 joules can cause severe damage and is potentially lethal⁸. These conclusions are based on the study entitled *Evaluation of the physiological effects of a rubber bullet, a baseball, and a flying baton*, published in 1977, and overseen by the United States Department of Justice.



Jordi Borràs

7. Rick T. Wiant and Lucien Haag, "Less lethal impact munitions: The forensic testing model", in Rick Wiant and Thomas Burns, *Risk Management of Less Lethal Options* (Florida: CRC Press, 2014), pp.103-142.

8. Omega Research Foundation, *Crowd Control Technologies: An appraisal of technologies for political control*, (Luxembourg: European Parliament, 2000), N74, VII, available online at: [https://www.europarl.europa.eu/RegData/etudes/etudes/stoa/2000/168394/DG-4-STOA_ET\(2000\)168394_EN\(PAR02\).pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/stoa/2000/168394/DG-4-STOA_ET(2000)168394_EN(PAR02).pdf)

1.3.1.2. Historical precedents

– The origins of “less-lethal” weapons date back to the beginning of the 20th century, in a **context of colonization**, as nation states began to test this new type of weaponry in their colonial territories. Former British colonies such as Hong Kong represent one such example, where the use of kinetic energy projectiles made of wood was initially documented in the 1960s, becoming the template for future kinetic weapons such as the rubber and plastic bullets **introduced in Northern Ireland in the early 1970s**.

1.3.1.3. Criteria for the use of KIPs according to international regulations

- The UN Guidance on Less-Lethal Weapons **explicitly prohibits the indirect firing of projectiles by causing them to ricochet off the ground before reaching people, due to the unacceptable risk posed by the inaccuracy and non-targetability of the projectile's trajectory**.
- Specifically, it establishes that the use of KIPs is only legitimate in the case of direct shots fired at the lower abdomen or legs of an individual engaged in violent behaviour, and **solely for the purpose of responding to an immediate risk of injury or death** (faced either by an agent of state security forces and bodies or by a third party).
- Along the same lines, *the United Nations Resource book on the use of force and firearms in law enforcement* (2017) emphasizes that **this type of projectile should not be used in any case to disperse a peaceful demonstration or protest**.

1.4. Recommendations and international positions regarding the use of rubber bullets

– In the 1980s, **the European Parliament ruled strongly in favour of the prohibition of such weaponry, and urged all the member states to uphold this position** in practice. On the 13th of May 1982, the European Parliament adopted four resolutions⁹ clearly recognizing that the use of plastic bullets could be fatal.



⁹. European Parliament, Use of plastic bullets (Brussels: Official Journal of the European Communities, No. 149, Doc. 1-245/82, 13th of May 1982) pp.65-70, available online at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1982:149:FULL&from=EN>

- Two years later, in 1984, the European Parliament once again insisted on this commitment in relation to the United Kingdom¹⁰. In a new resolution, it decried the continued use of plastic bullets as "intolerable" and called for their use to be abolished "before there are more unnecessary deaths."
- In 1999, the **Committee Against Torture**, in its 21st and 22nd sessions reports, designated the use of plastic bullets for riot control purposes by the United Kingdom as a cause for concern, and explicitly recommended their abolition¹¹. In 2008, the **United Nations Human Rights Council** also addressed the United Kingdom in its country report, restating its concerns about the use of attenuating energy projectiles since 2005, and calling for close monitoring of their impact and a consideration of banning their use were it determined that they could cause severe damage.
- For its part, the **Organization for Security and Co-operation in Europe (OSCE)** included, in its report *Human Rights Handbook on Policing Assemblies*, a series of general recommendations on police use of weapons characterized by the launching of impact projectiles. According to the OSCE, despite the fact that these weapons are considered "less-lethal", when used incorrectly they can cause death or serious injuries. For this reason, the organization urges the introduction of regulation of their use to reduce risk.
- At both a grassroots and an international level, organizations such as **Amnesty International (AI) and the Omega Research Foundation** have been clear in **advocating the prohibition of any and all non-precise projectiles**, in addition to limiting the use of kinetic impact projectiles exclusively to situations of violent disorder that constitute a clear danger to the public, and only when the use of less extreme measures is deemed insufficient¹². By the same token, Amnesty International insists that such projectiles must not be fired indiscriminately, nor shots fired indirectly (aiming at the ground), given that this unjustifiably increases the risk of firing upon non-targeted persons and causing serious injury.

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¹⁰. European Parliament, *Resolution on the need for an immediate ban on the use of the plastic bullets* (Brussels: Official Journal of the European Communities No. 300, 11th of October 1984) p.38, available online at: <https://op.europa.eu/en/publication-detail/-/publication/04fcd8ab-c49d-4f53-9a43-74a4e24f68ae/language-en>

¹¹. General Assembly of the United Nations, *Report of the Committee Against Torture, fifty-fourth session*, Supplement No. 44, (New York: United Nations, 1999) p.13, available online at: [https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2f54%2f44\(SUP P\)&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2f54%2f44(SUP P)&Lang=en)

¹². Amnesty International and Omega Research Foundation, *The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment* (London: Amnesty International, 2015) pp.18-19, available online at: <https://amnistia.org.ar/wp-content/uploads/delightful-downloads/2016/10/ACT3013052015SPANISH.pdf>

1.5. Comparative overview. A situational analysis concerning the use of rubber bullets in Europe

- Accessing information on matters of security and, specifically, on police operations, has proven challenging across most countries. A lack of access to information has a direct social impact in terms of accountability and, by extension, the public's ability to determine whether weaponry has been deployed in line with the international standards that regulate the use of force.
- In turn, the range of weapons, projectiles and manufacturers makes it difficult to establish a precise correlation between the different weapons used in each country.
- To this end, the comparative study *Einsatz von Gummimunition in Deutschland und Europa* (Use of rubber munitions in Germany and Europe), commissioned by the **German Parliament (Bundestag)** in 2017, is one of the key documents in terms of analysing the use, country-by-country, of these projectiles across the continent¹³. **The study concludes that use of rubber bullets is currently discontinued in Austria, Denmark, Finland, Ireland, Norway, Romania and Sweden.**
- In 2007, the **UN Interim Administration Mission in Kosovo (UNMIK)** also banned the use of rubber bullets by all police units under its mandate, following the death of two protesters.

1.6. The use of rubber bullets in upholding law and order, and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

- The current United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, warned in his 2017 report that **other forms of cruel, inhuman or degrading treatment or punishment may include unnecessary or excessive use of force**, or other examples of illegitimate use of force against non-defenceless persons, for example, in situations of self-defence, detention or crowd control¹⁴.



¹³. Deutscher Bundestag, *Einsatz von Gummimunition in Deutschland und Europa*, consulted between February and May 2021, <https://www.bundestag.de/resource/blob/529198/a52021ac1fc3723e368d86086e74cc11/wd-3-160-17-pdf-data.pdf> (Available in English: <https://www.statewatch.org/media/documents/news/2017/oct/germany-parl-research-situation-report-on-use-rubber-ammunition-in-Europe.pdf>)

¹⁴. Nils Melzer, *Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment*, (United Nations, 20th of July 2017), p.14, paragraph 32. Available online at: <https://www.refworld.org/es/pdfid/59b199b64.pdf>.

- On this basis, Melzer, citing the provisions of different United Nations mandate holders, maintains that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is not limited to acts committed against those deprived of liberty, but **"also covers excessive police violence, such as during arrest and the policing of assemblies"**¹⁵.
- In relation to the use of rubber bullets, Melzer attests that the concept of **"intentionality"** (included in the United Nations definition of torture) within the framework of international law does not necessarily equate to the desire to cause pain or suffering, but rather **that it is "foreseeable that the use of force will cause pain or suffering in the natural course of events."** In this sense, Melzer considers that **"if you use a certain type of weapon in way that will then become uncontrollable"**, as in the case of rubber bullets, **"you are deliberately or consciously taking the risk...that it will cause these types of effects"**¹⁶.

1.7. European Court of Human Rights (ECHR) case law

- The European Court of Human Rights (ECHR) has heard and ruled on a variety of cases in which accusations of irregular use of force and police projectiles during protests and demonstrations have been made. These hearings have, in the main, taken place under the pretext of **clarifying whether a violation of Article 2 (right to life) or Article 3 (prohibition of torture) of the European Convention on Human Rights (ECHR), both in its substantive and its procedural aspects, may have occurred.**
- In the specific case of rubber bullets, the ECHR has ultimately recognized, in the case **Kilici v. Turkey**, that in **"firing a rubber bullet [one] runs the risk of causing serious injuries insofar as this type of ammunition is used improperly"**, to the point of considering that, despite the fact that in this case of injury caused to the plaintiff "was relatively minor, the fact is that, to the extent that the dangerousness of said ammunition is not in doubt, the complainant was still exposed to a greater risk of injury".
- In turn, in **Rizvanov v. Azerbaijan**, the Court upheld that "when a person is confronted by the police or other agent of the State, **recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity** and is in principle an infringement of the right set forth in Article 3 of the Convention"¹⁷.



¹⁵. Ibid p.15, paragraph 34.

¹⁶. Nils Melzer, intervention as part of the virtual panel, *Addressing police brutality as a form of torture* (World Organisation Against Torture [OMCT], 24th of May 2021), consulted between March and May 2021, <https://www.facebook.com/events/932644077510074/>

¹⁷. European Court of Human Rights, Case of Rizvanov v. Azerbaijan. Application no. 31805/06 (Strasbourg: 17th of July 2012), paragraph 49, available online at: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Rizvanov%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-110488%22%5D%7D>

CHAPTER 2

Legal context of the use of rubber bullets in Spain



Victor Serri

2.1. Regulatory framework governing the use of rubber bullets in operations by Spanish state security forces

- The **Security Forces Act (LOFCSE) 2/1986, 13th of March**, details the principles governing all police interventions, and the circumstances that justify the use of weapons. The Act is applicable to all state security forces and bodies, both those dependent on the central Government - the National Police Corps and the Civil Guard - and those dependent on local and devolved administrations, in the latter case known as Autonomous Communities (art. 2).
- Article 5.2 section (d) establishes that: "Weaponry shall be used [by officers] only in situations where their lives or physical wellbeing, or those of third parties, are in evident and serious risk, or in such circumstances that should entail a serious risk to public safety, and in accordance with the principles laid down in the preceding paragraph."
- Nevertheless, **the regulations governing the weaponry used by state security forces and bodies have never been made public**. The scant information that we have been able to access in the course of our investigation has come from parliamentary hearings, in which the Government stated in 2018 that rubber bullets - referred to as "pelotas de goma" - **are only to be used by specialized crowd control units as a deterrent¹⁸**. **The use of rubber bullets is also intended as "a last resort available when other tools, instruments or procedures have been proven ineffective or are insufficient in restoring of law and order"**.

2.2. The use of rubber bullets by the National Police Corps

- Agents of the National Police Corps (CNP) - in particular, **Police Intervention Units (IPU) or anti-riot units, but also other divisions such as the Prevention and Reaction Units (UPR)** - are allowed to use rubber bullets throughout the national territory of Spain in its entirety.



¹⁸. Jon Iñarritu García, *Written question submitted 18th of January 2018 (report number 184/036171)* (Madrid: Senate, 2018), available online at <https://www.senado.es/web/expedientdocblobervlet?legis=12&id=85552>

2.2.1. Weaponry and projectile characteristics

2.2.1.1. Weaponry

– The weapons used by the National Police Corps to fire rubber bullets are **Franchi SPS 350 shotguns**¹⁹, although, as the Omega Research Foundation points out in its *Expert Opinion report concerning the blinding of Roger Español on the 1st of October 2017*²⁰, it is possible that other Franchi brand shotguns are also used by the force.

Table 1. General weapon specifications

General weapon specifications	
Brand	Franchi
Model	SPS 350 PN
Calibre	12/70
Number of shoots	4+1 in chamber
Barrel length	350 mm (13,77")
Weapon length	830 mm
Unloaded weapon weight	2,7 kg
Rate of fire	24 a 30 rounds per minute
Aiming system	Rear sight and crosshair
Operating system	Sliding
Double insurance mechanism	Manual y automatic

Note. Table created based on information extracted from the texts "Identificación del arma y la munición" (González Arrieta)²¹ and "Manipulaciones básicas de la escopeta Franchi SPS-350 PN" (Herrera Garcia)²².

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19. Reference to the same is made in information published through the State Public Sector Contracting Platform, in the bibliography referenced in the technical weaponry specifications, and in one of the judicial proceedings that have been accessed as part of our research. Further reference was made in a presentation, ostensibly compiled by the Interior Ministry, dated 13th of June 2009, consulted between February and May 2021: <https://docplayer.es/76729678-Ministerio-del-interior.html>

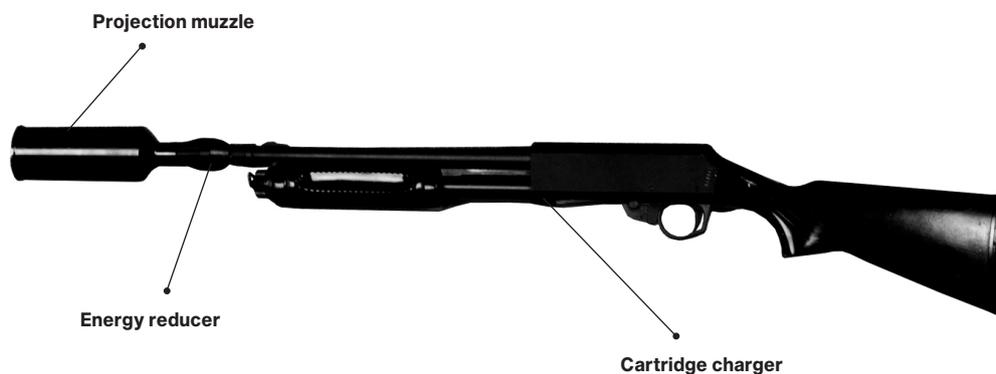
20. Neil Corney and Matthew McEvoy, Omega Research Foundation, *Expert Opinion concerning the blinding of Roger Español on 1 October 2017* (UK: Research Associates at the Omega Research Foundation, 2021).

21. María Angélica González Arrieta, *Identificación del arma y la munición utilizadas en un disparo con técnicas conexionistas* (Salamanca: Ediciones Universidad de Salamanca, D.L., 2000), p. 265, available online at: <https://gredos.usal.es/bitstream/handle/10366/55590/978-84-7800-916-9.pdf?sequence=1>

22. Francisco Pedro Herrera García, "Manipulaciones básicas de la escopeta Franchi SPS-350 PN", consulted between February and May 2021, <https://www.tacticadeseguridad.com/normativa/category/3-armamento-documentos?download=17:escopeta-franchi-sps-350-pn>

- A **muzzle** - a cylindrical piece of steel that is attached to the barrel to house the rubber bullet before being launched - can be fitted to this shotgun.
- An **energy reducer** can also be fitted between the barrel of the shotgun and the muzzle, in order to reduce the energy at which the projectile is fired. Its use is mandatory in all such devices used in public safety operations²³.

Modelo de escopeta para el lanzamiento de balas de goma



Source: own elaboration

2.2.1.2. Projectiles and cartridges

- Rubber bullets are spheres made of vulcanized natural rubber²⁴. **These projectiles change shape, flattening when fired.** This deformation means that, at the moment of impact, one part is more pointed than the other, and results in a greater penetration capacity should they hit delicate parts of the body, such as the eyes²⁵.
- **These projectiles do not have any unique identifiers or markings that can be used to link them to the agent who fired them.**



Borja Lozano

23. Circular sobre el Empleo de Material Antidisturbios de la Policía Nacional (Spain, 2013)

24. Information obtained from a presentation, the authorship of which is ascribed to the Ministry of the Interior, dated 13th of June 2009, available online at: <https://docplayer.es/76729678-Ministerio-del-interior.html>

25. Stop Bales de Goma, *El uso de balas de goma por parte de la Brigada Móvil de los Mossos d'Esquadra (BRIMO)* (Barcelona: Stop Bales de Goma, 2013), p.3, available online at: https://issuu.com/stopbalesdegoma/docs/informe-sbg2013_es

Table 2. General projectile specifications

General projectile specifications	
Nominal diameter	54.30 mm
Diameter tolerance	± 0.10 mm
Maximum eccentricity	0.30 mm
Ricochet in height	≥65%
SHORE A-2 hardness	40-50
Weight	80-85 g

Note. Table created based on information extracted from the Government's response of the 16th of April, 2018²⁶ to the written question presented by the then-Senator for the Basque Country Jon Iñárritu García on the 18th of January, 2018²⁷.

– No publicly available information exists regarding the manufacturers' technical specifications of the weapons and projectiles, thus making monitoring and supervision difficult.

2.2.2. Weapon regulation

– **The regulatory framework governing the use of rubber bullets by agents of the National Police Corps is neither publicly available nor accessible.** Nevertheless, reports and recommendations from the parliamentary Ombudsman (Defensor del Pueblo) make partial reference to such regulations upon which, within the framework of this investigation, it has been possible to expand.

– Of particular note are the **Circular concerning the use of riot control equipment, dated 3rd of September 2013**, issued by the General Commissariat for Public Safety and approved by the Assistant Director of Operations, and **Point 13 of the Update Manual for Police Operations Units.**



An agent of the Mossos d'Esquadra loads a cartridge during protests in Barcelona, before the ban on these weapons, in April 2014 · Jordi Borràs



²⁶. Spanish Government, *Government response 16th of April 2018 (684/36171)* (Madrid: Senate, 2018), available online at: <https://www.senado.es/web/expedientdocbobserviet?legis=12&id=108731>

²⁷. Jon Iñárritu García, *Written question submitted 18th of January 2018 (report number 184/036171)* (Madrid: Senate, 2018), available online at: <https://www.senado.es/web/expedientdocbobserviet?legis=12&id=85552>

2.2.2.1. Deployment scenarios

- The 2013 Circular establishes that these weapons may be used: "Where necessary and according to the terms outlined in the 'progressive use of resources' protocol, **rubber bullets may be fired at individuals or groups of assailants whose behaviour entails a risk for officers or members of the public, or who are engaged in damage to property, with the objective of dissuading such action, and where such use adheres to the fundamental precept of causing** the least possible harm."
- It is worth stressing that, as the Ombudsman established in 2014, **no such “protocol for the progressive use of resources” as referred to in the 2013 Circular exists.**
- **Neither the generic reference made to “risk for officers or members of the public”, nor the authorization of deployment in the event of damage to property, comply with international regulations.** These regulations specifically limit the use of this type of projectiles to circumstances in which there is a clear and present danger of injury to a police officer or any other person.

Table 3. Circumstances of potentially lawful use of KIPs

Circumstances of potentially lawful use of KIPs	
Circular concerning the Use of Riot Control Equipment by the Spanish National Police Corps (2013)	When faced with "a risk for officers or members of the public" or "damage to property"
<i>UN Resource book on the use of force and firearms in law enforcement (2017)</i>	When faced with "an imminent threat of death or serious injury"
<i>UN Guidance on Less-Lethal Weapons in Law Enforcement</i>	When faced with "an imminent threat of injury"

Note. Compiled by authors.

- Furthermore, **the use of the expression “approximately” to qualify the permitted distances from which these projectiles can be fired is unclear.** This could make it difficult for an officer acting outside of these parameters to be held accountable.
- Contrary to international regulatory standards, the operational protocols of Spanish state security forces and bodies posit an understanding of demonstrations in which those present are deprived of the condition of individuality, and come to be considered part of a mass. Point 13 of the Update Manual for Police Operations Units establishes that, in a demonstration, **"the individual identity of each participant is cancelled out in the creation of a collective identity with a tendency towards excess [which] lacks moral checks and balances".**

2.2.2.2. Discharge

- **Kinetic energy projectiles are prone to following an unstable trajectory**, so that "when fired or launched from distance, **these weapons are imprecise, which carries the possibility of hitting more vulnerable parts of the body or causing unintended injury to third parties**"²⁸.
- **The shape and material of rubber bullets causes them to rebound upon impact, thus increasing the unpredictability of their trajectory.**
- **In the aforementioned regulations, there is no guidance nor reference as to how these projectiles should be fired by officers.** This notwithstanding, in the course of one of the legal proceedings concerning the use of rubber bullets consulted as part of this research, it was learned that several **agents of the Police Operations Units stated that the guidance and instructions regarding the use of this projectile are precisely that it is to be fired with the aim that it should rebound before reaching its target.**

2.2.2.3. Chain of command

- Commanding officers have an obligation to oversee the actions carried out by the agents under their command, in addition to responsibility for their own actions. Consequently, **the authorization of the use of rubber bullets, as well as their supervision and control, further to consenting to their use, can lead to criminal liability.**
- The 2013 Circular stipulates that authorization from the commanding officer of the acting unit is a prerequisite for the use of rubber bullets. Specifically, it is established that **the officer in operational command "will determine which equipment may be used**, following an appraisal of the situation in line with established criteria according to the principles of expediency, proportionality and congruence", such use being **"permanently controlled by the relevant intermediate command"**.



²⁸. International Network of Civil Liberties Organizations (INCLCO) y Physicians for Human Rights (PHR). Letalidad Encubierta (INCLCO, 2017), p.39, available online at: www.inclco.net/pdf/lealtad-encubierta.pdf

2.2.2.4. Control and accountability measures

- The international regulatory framework contained in the UN Guide on less-lethal weapons stipulates that this type of projectile "must be tested and authorized to ensure that they are sufficiently accurate to strike a safe area on a human-sized target from the required distance, and without excessive energy, which could cause injury"²⁹.
- As part of this investigation, information was requested from the Ministry of the Interior regarding the characteristics of the type of weapon, projectile and the energy reducer in question, as well as the tests and impact reports carried out. **Said request was denied on the grounds that "the disclosure of such documents may seriously jeopardize both national security and public safety".**
- **The lack of transparency** regarding the results of any tests carried out on the weapons and projectiles used, as well as whether such tests have been carried out, and under what criteria, **prevents oversight of said weaponry and its alignment with international standards.**

2.2.2.5. Institutional positions and recommendations

- In June 2014, **the then-Spanish Ombudsman, Soledad Becerril, highlighted the insufficiency of existing regulations regarding the use of rubber bullets by the National Police Corps.** She confirmed that the so-called "progressive use of resources" protocol³⁰ to which the 2013 Circular refers does not exist, recognition of which was provided by the Directorate-General of the Police itself.
- The Ombudsman found that "considering that these are potentially dangerous weapons and munitions, precise and detailed regulations must be established so as to avoid or minimize the unwanted consequences that their use may have for the physical integrity and wellbeing of the general public"³¹. For this reason, **she recommended that the Directorate-General of the Police proceed to regulate the deployment of weapons used to fire rubber bullets.**

29. OHCHR, *Guidance on Less-Lethal Weapons in Law Enforcement* (Geneva and New York: UN, 2020), section 7.5.7, available online at: https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

30. Defensor del Pueblo, *Recommendation. Normativa de utilización de material antidisturbios* (Madrid: Defensor del Pueblo, 2014), available online at: <https://www.defensordelpueblo.es/resoluciones/normativa-de-utilizacion-de-material-antidisturbios-2/>

31. Ibid.

- However, **the Directorate-General of the Police did not accept the aforementioned recommendation**, "in considering that the existing mechanisms of regulation and oversight are sufficient", in reference to those contained in the Ombudsman's 2014 annual report.
- On the 27th of February 2013, several non-binding motions were tabled with the aim of prohibiting the use of rubber bullets throughout Spain. None of these motions were passed.

- **International recommendations addressing Spain**

- Following a visit to the country in **June 2013**, the European **Commissioner for Human Rights of the Council of Europe**, Nils Muižnieks, expressed his concern regarding the use of such weapons.
- The Commission's document contains the provisions laid out by the **European Committee for the Prevention of Torture (CPT)** in its **2011** country report. In this report, it was stressed that **"the criteria for the use of projectile-firing weapons by police officers should at least closely correspond to those governing the use of firearms**; their use must be thoroughly regulated and monitored." The CPT also warned that "there should always be a thorough de-briefing and evaluation of every incident" following the use of such weapons³².
- Since 2018, campaigning **organizations such as Amnesty International have urged the Spanish Ministry of the Interior to prohibit the use of rubber bullets throughout national territory**. Amnesty International considers them to be highly imprecise, and cites a lack of protocols for their use in line with international standards, which prohibit - above and beyond other considerations - that they be used to disperse a crowd³³.

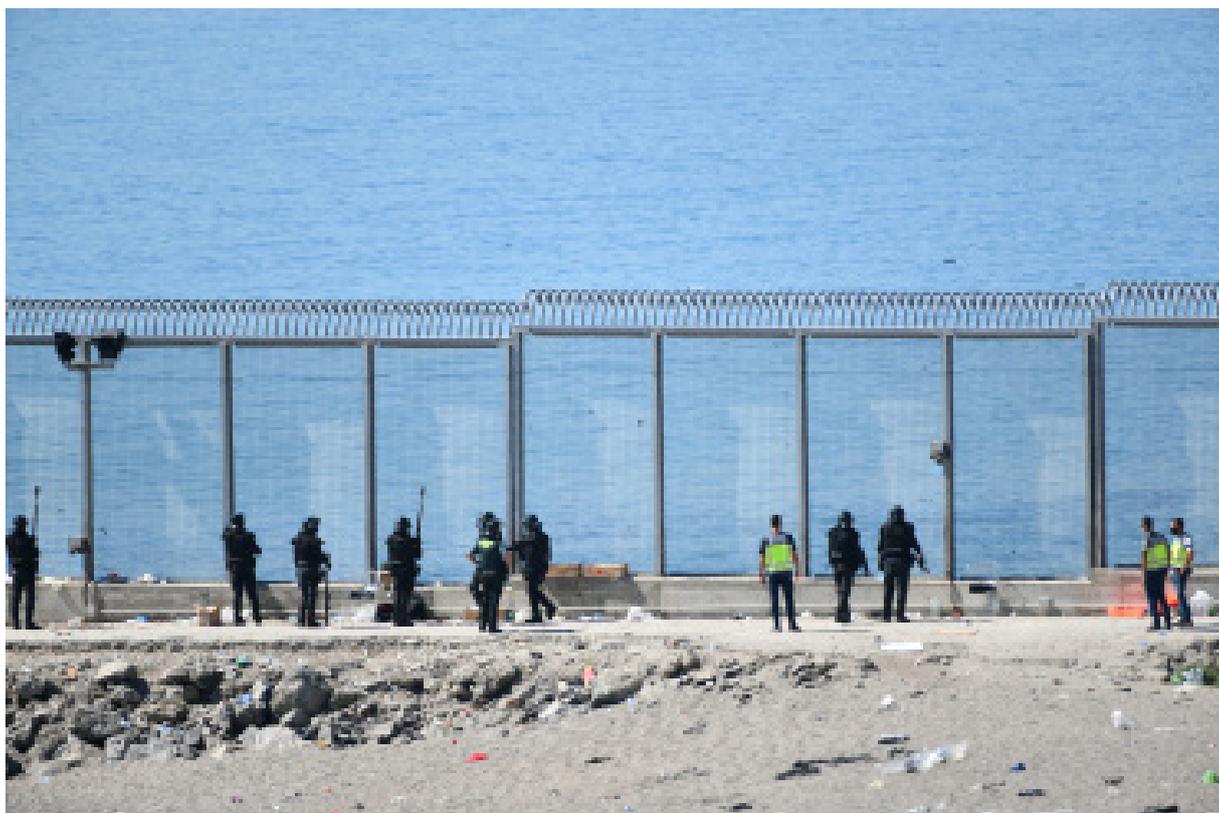


³². European Committee for the Prevention of Torture, Report to the Spanish Government on the visit to Spain made by the European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment (CPT) carried out from May 30 to June 13, 2011 (Strasbourg: 30th of April 2013), pages 53-54, available online at: https://www.defensordelpueblo.es/wp-content/informesM-NPEspania/europa/6_INFORME_CPT_2011.pdf

³³. Amnesty International, Spain: Interior Minister must end to the use of rubber bullets, 10th of May 2018, available online at: <https://www.amnesty.ca/news/spain-interior-minister-must-end-use-rubber-bullets>

2.3. The use of rubber bullets by the Civil Guard

- In February 2014, information was leaked to the media which revealed **that the Director General of the Civil Guard had issued a verbal instruction limiting the use of rubber bullets and teargas in the border ports of the Autonomous Cities of Ceuta and Melilla**, to the effect that their use should be reserved exclusively for "extreme circumstances"³⁴.
- It is **unknown whether said instruction, which applied exclusively to operations undertaken by Civil Guard officers, is still in force today**. In any case, it did not apply to any other territory of the State, nor to officers of the National Police Corps.
- This decision was revealed after the **6th of February 2014, when at least 14 people drowned while trying to swim to the Tarajal beach (Ceuta)**³⁵. According to the Coordinadora de Barrios, one of the organizations involved in bringing a third-party prosecution to trial, their deaths occurred following the use of rubber bullets and other riot control resources by the Civil Guard to repel them and prevent their entry into the country.



Antonio Sampere



³⁴. José María Olmo, "Interior prohíbe lanzar pelotas de goma en la valla pero las mantiene en el resto de España", *El Confidencial*, 26th of February 2014, available online at: https://www.elconfidencial.com/espana/2014-02-26/interior-prohibe-lanzar-pelotas-de-goma-en-la-valla-per-o-las-mantiene-en-el-resto-de-espana_93999/

³⁵. Information obtained during interview with Patricia Fernández, 10th of May 2021.

2.4. The use of rubber bullets by other police forces

– **The use of rubber bullets by the regional police forces responsible for the upholding of law and order is prohibited in Catalonia, the Basque Country and Navarre. However, this prohibition does not apply to other police forces that may operate in these same territories in specific circumstances.** This occurred on the 1st of October 2017, on the occasion of the referendum on Catalanian independence, and again in October 2019, during protests against the prison sentences handed down to several Catalan politicians and leaders, when the National Police Corps used rubber bullets in Catalonia.

Table 4. Prohibition of the use of rubber bullets by regional police forces

Prohibition of the use of rubber bullets by regional police forces			
Regional police force and corresponding territory	Effective date of the ban on use	Substitute weapon	Type of projectile
Mossos d'Esquadra – Catalonia	30th of April 2014	40mm launcher	Foam
Ertzaintza – Basque Country	16th of April 2015	40mm launcher	Foam
The Chartered Police of Navarre	12th of May 2017	40mm launcher	Foam

Note.
Compiled
by authors

2.4.1. Deployment by the Mossos d'Esquadra in Catalonia

– Following a plenary session on the 18th of December 2013, **Resolution 476/X was passed by the Parliament of Catalonia**, validating the conclusions of the Investigative Committee Report on Public Safety and Law and Order Models and the Use of Riot Control Resources in Mass Gatherings, in which, among other matters, a total ban on the use of rubber bullets by the Mossos d'Esquadra was approved from the 30th of April 2014³⁶.

– Despite this ban, **the use of foam or memory foam bullets continues.** The use of this alternative projectile **has already been shown to be highly likely to cause injury.** Prior to the date of the report's finalization, there were at least two known cases of ocular injury resulting from the deployment of this type of projectile, notwithstanding the supposed precision of the weaponry used to fire it.

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36. Parliament of Catalonia, *Resolució 476/X del Parlament de Catalunya, per la qual s'aproven les conclusions de l'Informe de la Comissió d'Estudi dels Models de Seguretat i Ordre Públic i de l'Ús de Material Antiavalots en Esdeveniments de Masses*, (Barcelona: BOPC 222, 2013, <http://www.parlament.cat/document/getdoc/10006224>)



Jordi Borrás

2.4.2. Deployment by the Ertzaintza in the Basque Country

– Until 2012, the use of rubber bullets in the Basque Country was regulated by a 1997 order issued by the then-Directorate of Public Safety. This order was replaced by Order of the **Deputy Minister of Security no. 73**, dated the 11th of May 2012 (*Regulación del uso y control del armamento, munición y otros elementos antidisturbios*). This was complemented by **Instruction no. 74**, dated the 16th of April 2013 (*Normativa de uso del lanzabolos*), which specifically regulates all scenarios related to the new 40mm launcher³⁷.



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37. Basque Government, Equipamientos y las acciones policiales en las manifestaciones, (Irekia, 11th of April 2013), <https://www.irekia.euskadi.eus/es/proposals/811-equipamientos-las-acciones-policiales-las-manifestaciones>

- This new regulatory framework was approved in response to the decision by the Basque Government to restrict the use of rubber bullets deployed by the Ertzaintza, following the cases of Iñigo Cabacas and Xuban Nafarrete, and led to the agreement that the force's Public Safety Units would cease to deploy rubber bullets as of the 1st of January 2013. **However, the ban was not at the time comprehensive, and deployment by specialized flying squad units known as “beltzas” continued to be permitted in “exceptional situations”**, subject to direct authorization given by commanding officers.
- Ultimately, the Basque Parliament (Eusko Legebiltzarra) passed the **non-binding motion No. 42/2015** on the 16th of April 2016, calling for **“the immediate restriction and definitive substitution of rubber bullets and rubber bullet weaponry in favour of less harmful alternatives**, thus allowing Ertzaintza officers to carry out their responsibilities correctly and efficiently”³⁸.

2.4.3. Deployment by the Chartered Police of Navarre

- As stipulated in the **Foral Act 56/2017, dated the 5th of April**, and effective from the 12th of May 2017, 40mm launchers³⁹, replaced the shotguns deployed up until that point to fire rubber bullets. The passing of this act represented the first step by the Government of Navarre to regulate the statutory deployment of firearms by the Chartered Police⁴⁰.



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38. Basque Parliament, Acuerdos del pleno celebrado el día 16 de abril de 2015 (Vitoria-Gasteiz: Basque Parliament, 2015), available online at: <https://dropdoc.ru/doc/1158232/acuerdos-del-pleno-celebrado-el-d%C3%ADa-16-de-abril-de-2015>

39. Minister of the Presidency, Civil Service, Interior and Justice, Orden Foral 56/2017, 5th of April, regulating use of reglamentary weaponry by the Chartered Police of Navarre. Bon N.º 90 (5th of April 2017), available online at: <http://www.lexnavarra.navarra.es/detalle.asp?r=38782>

40. Government of Navarre, “Regulado por primera vez el uso de las armas de la Policía Foral”, Navarra.es, 6th of April 2017, available online at: https://www.navarra.es/home_es/Actualidad/Sala+de+prensa/Noticias/2017/04/06/reglamento+uso+armas+Policia+Foral.htm

CHAPTER 3

The repercussions of rubber bullets in Spain

3.1. Cases of rubber bullets casualties in Spain: from 2000 to 2020

- At present, **the Spanish state does not keep official records of fatalities or injuries caused by the use of rubber bullets**, significantly limiting its capacity to offer an effective institutional response to the situation. The only known records have been prepared by members of the public via newspaper articles⁴¹ and reports from victims' organizations such as Stop Bales de Goma⁴².
- **From 2000 to 2020 - the period analysed in this report - a total of 40 cases of rubber bullet casualties have been documented, 37 men and 3 women, with an average age of around 30 years old.** However, it is important to emphasize that this data does not provide a complete picture of the problem, and as such is indicative of underreporting.

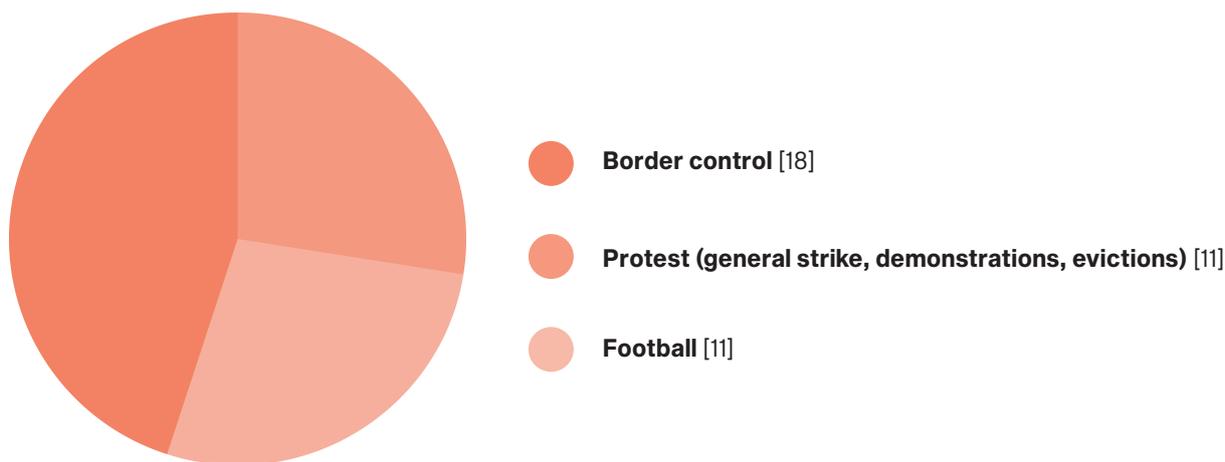


⁴¹. Ter García, "Cronología de las balas de goma: al menos 44 heridos graves y 23 fallecidos", El Salto, 16th of October 2018, available online at: <https://www.elsaltodiario.com/balas-de-goma/cronologia-balas-de-goma-al-menos-35-heridos-graves-y-23-fallecidos>

⁴². Stop Bales de Goma, El uso de balas de goma por parte de la Brigada Móvil de los Mossos de Esquadra (BRIMO) (Barcelona: Stop Bales de Goma, 2013), available online at: <https://stopbalesdegoma.wordpress.com/informe/>

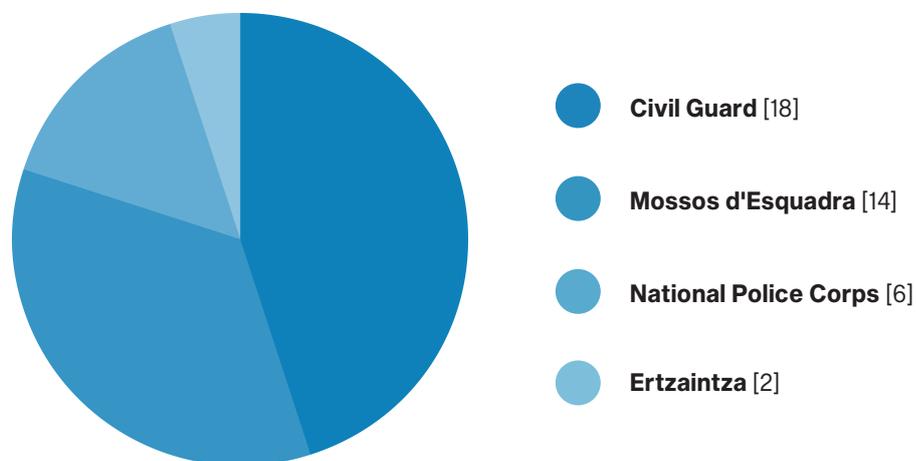
– Rubber bullet projectile impact has occurred, in **45%** of the cases, on the Ceuta border; in **27.5%**, in the context of protests (including strikes, demonstrations and evictions), and a further **27.5%** in the context of football.

Graph 1. Context in which an injury resulted from rubber bullet use in Spain (2000-2020)



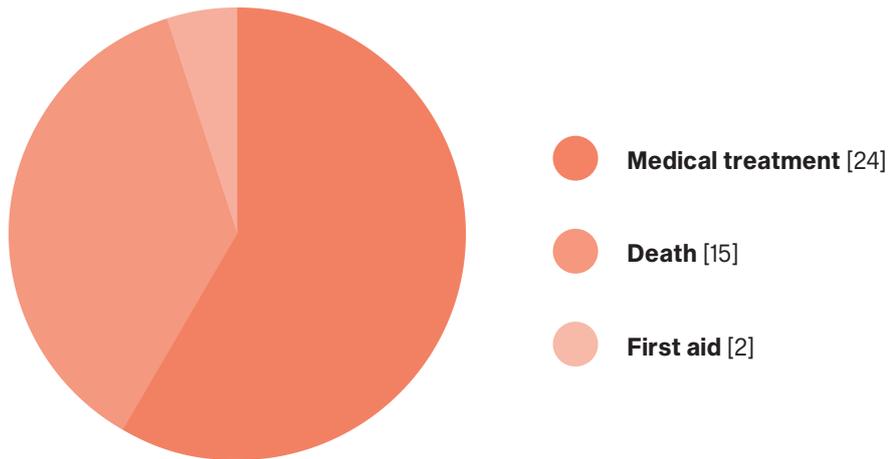
– The state security officers responsible for these incidents belong, in **43.6%** of cases, to the Civil Guard (on the southern border), to the Mossos d'Esquadra in **35.9%**, followed by the National Police Corps in **15.4%**, and to the Ertzaintza in **5.1%** of registered incidents.

Graph 2. Spanish police force which fired a rubber bullet causing a registered injury (2000-2020)



– An outcome analysis of rubber bullet impact shows that medical treatment was required in the majority of the incidents documented (**58%**). The part of the body most affected by the firing of this type of projectile, in **33.3%** of the registered cases, were the eyes.

Graph 3. Type of medical assistance required following rubber bullet impact in Spain (2000-2020)



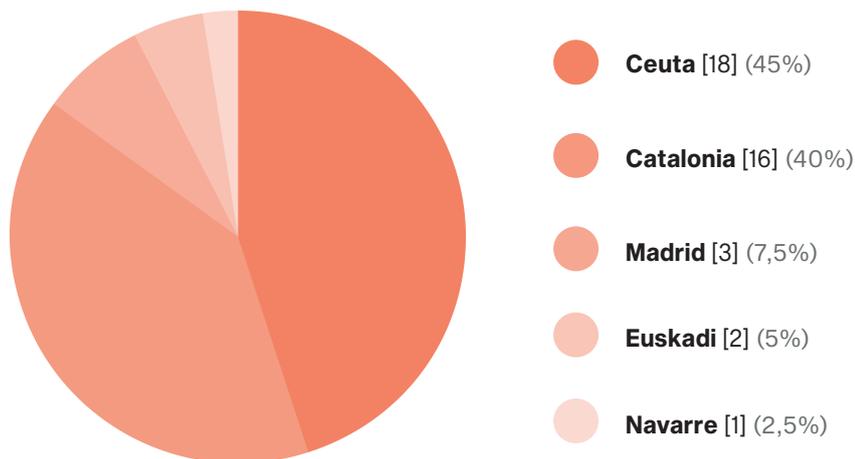
– **Loss of functionality (partial or total) or the loss of a body part as a result of the injury suffered represent 37.5% of the registered cases.** Indirect loss of life caused by the use of rubber bullets included in this report covers 35% of the documented cases, all of them corresponding to the use of these projectiles by the Civil Guard in February 2014 on the beach of Tarajal. **One case of direct loss of life, that of Iñigo Cabacas, occurred in April 2012.**



Jordi Naval · Francesca Oggiano

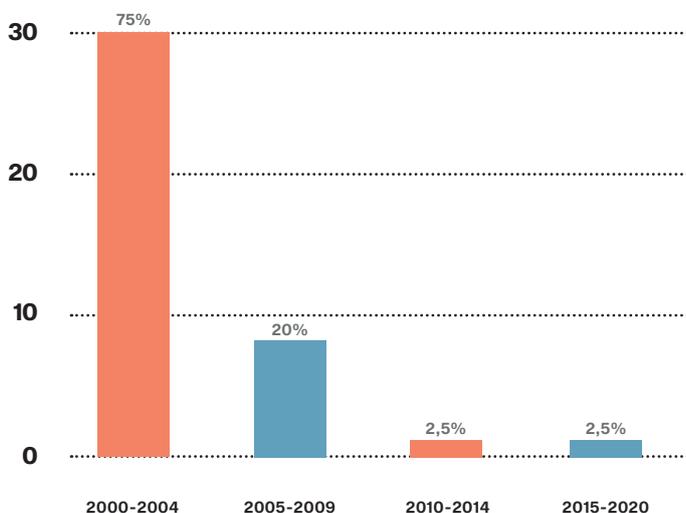
- The Tarajal incident makes the Autonomous City of Ceuta the territory most affected by this type of police projectile (**45%**), followed by Catalonia (**40%**), Madrid (**7.4%**), Euskadi (**5%**) and Navarre (**2.5%**).

Graph 4. Autonomous Community of Spain in which an instance of rubber bullet use was registered (2000-2020)



- In turn, **most incidents occurred in the ten years between 2005 and 2015**, a particularly turbulent period marked by an economic and social crisis that generated a strong public backlash, with people taking to the streets in unprecedented numbers to protest.

Graph 5. Year in which an incidence of injury caused by rubber bullet impact was registered in Spain (2000-2020)

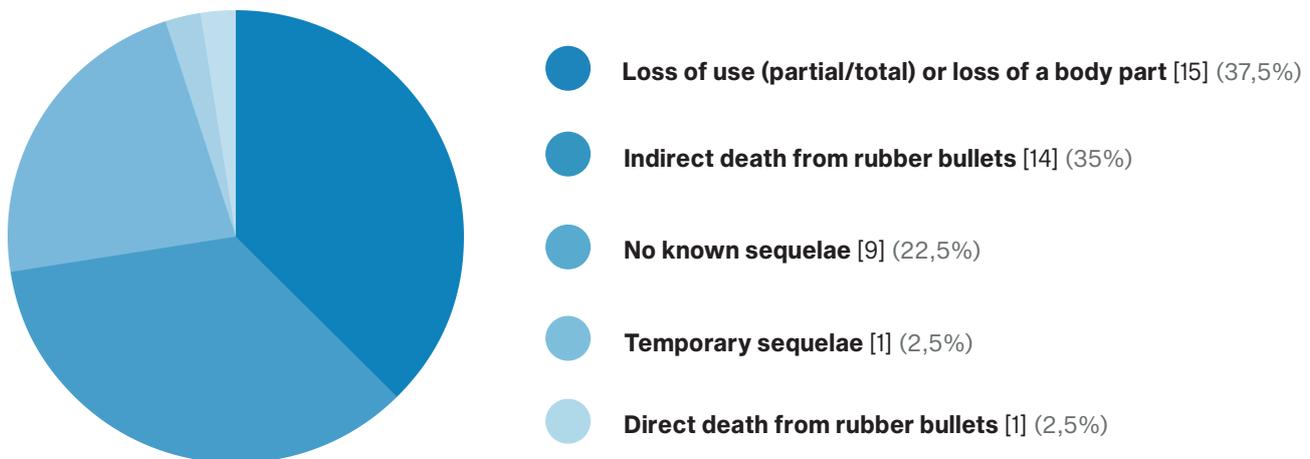


3.2. Physical repercussions: potential for harm and lethality of rubber bullets

– For the purposes of carrying out an analysis of the potential physical injuries caused by the impact of a rubber bullet on the human body, the cases of the 14 people who drowned in Tarajal as a result of the use of rubber bullets in open water are discounted herein. As such, the conclusions provided apply to a total of 26 people documented to have suffered the direct impact of said projectile, deployed by state security forces and bodies, between the years 2000 and 2020.

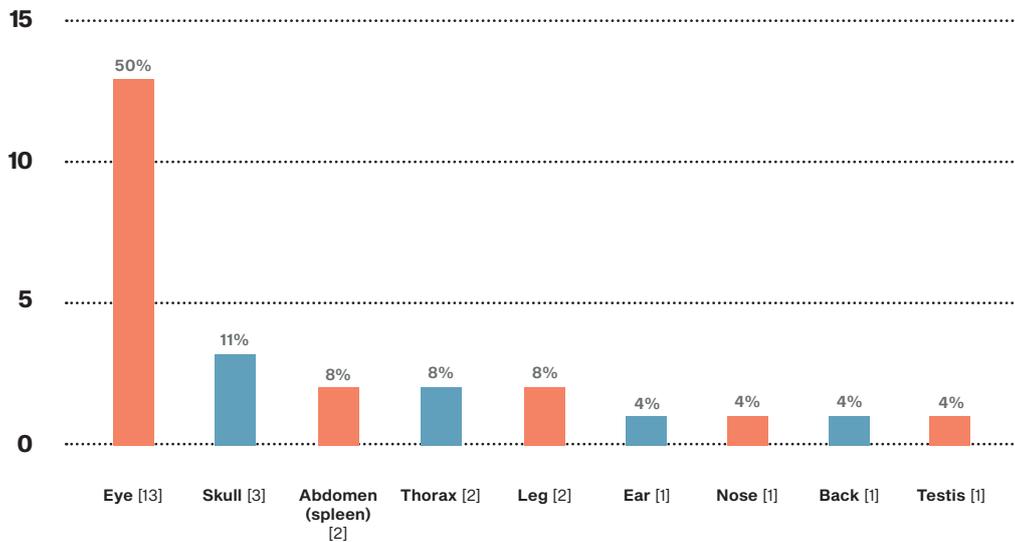
– Of these, 24 required medical attention, while 2 required first aid only. In turn, of the 26, **one (1) died as a direct consequence of being fired upon, 15 suffered loss or loss of functionality of a body part, one (1) experienced short-term sequelae, and in nine (9) cases no known sequelae** could be established.

Graph 6. Lasting effects of injury caused by rubber bullet impact in Spain (2000-2020)



– It should be noted that, **in 18 cases –that is to say, more than half (69%)– the affected party received rubber bullet impact to the head, with the ocular area being the most affected (13 out of 18 cases)**. Of these, a number suffered damage to the eyeball (7) or the loss of vision in one eye (4) while, in two (2) cases, the exact nature of sequelae could not be established.

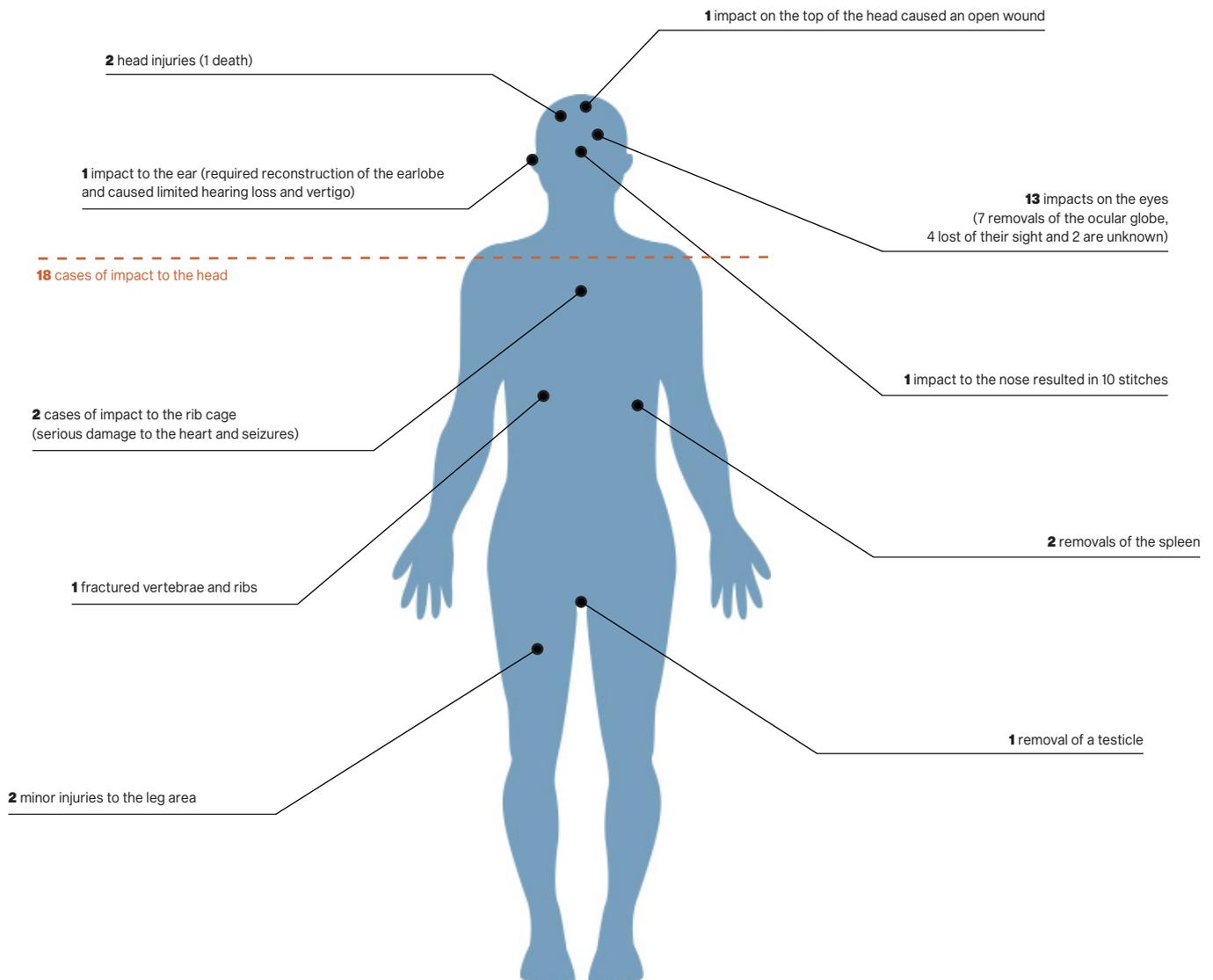
Graph 7. Parts of the body affected by rubber bullet use in Spain (2000-2020)*



**Note: This graph does not include the 14 people who died indirectly as a result of the firing of rubber bullets in El Tarajal, therefore the total number of victims included herein is 26, and not 40. This is in order to fully establish which parts of the body have been most affected by direct rubber bullet impact.*

- In addition to the rupture of the eyeball and significant loss of intraocular tissue observed following impact occurring in the ocular area, other types of frequently-associated injuries have been noted. These include **fractures of the orbital wall, extensive eyelid injuries, atrophy of fatty tissue due to cell death, and even loss of cerebrospinal fluid. The development of photophobia, fatigue, and loss of vision** have also been documented.
- It is also known that the repercussions of monocular vision are profound and far-reaching. One such effect is the **loss of stereoscopic vision – that is, the ability to integrate the images seen by each eye into a single three-dimensional image.** In turn, a loss of depth perception arises, with significant effects in the performance of day-to-day tasks.
- In addition to eye injuries, a rubber bullet which is fired upon or rebounds against the thoracic region may result in **cardiac arrest.** Further significant risks include **the rupture of the liver** or an **acute haemorrhage around the spleen.** In both cases, there is an attendant risk of death. **Contusions and both severe and non-severe bruising** may also occur, depending on the distance and the force of the impact.

- The incidents recorded in Spain between 2000 and 2020 include **two (2) head injuries**, one of which resulted in the death of Iñigo Cabacas, with the other entailing the admission of the affected party to the intensive care unit (ICU). One **(1) impact on the top of the head** caused an open wound, another **(1) to the ear** required reconstruction of the earlobe and caused limited hearing loss and vertigo lasting 6 months, and one **(1) impact to the nose** resulted in 10 stitches.
- On top of these are **two (2) cases of impact to the rib cage**, one of which led to the development of serious damage to the heart, and the other, to seizures; **one (1) resulting in fractured vertebrae and ribs**; **two (2) requiring the removal of the spleen**, and another **(1), of a testicle**; and a further **two (2) resulting in minor injuries to the leg area**, rendering the affected parties temporarily incapacitated.
- In terms of documentation, **the Spanish state has not produced any of its own medical studies that analyse and evaluate these injuries.**



3.3. The psychological and psychosocial repercussions of rubber bullets use

3.3.1. Eyeball damage and disfigurement and the experience of blindness

– The damage and disfigurement of a major body part such as the eye, in an area of high visibility such as the face, is an **extremely abrupt and traumatic experience for those directly affected**. Individuals are ill-prepared for such an occurrence, which comes to represent a watershed moment in their lives.

3.3.1.1. Physiological damage and the challenge of adapting to new physical circumstances

– **Individuals experience physical pain and difficulties related to spatial orientation**, such as calculating distances from objects in their immediate environment, or impaired mobility. They also **experience problems with balance or vision due to ocular impairment**.

– Their attention span and concentration –essential to recovering motor coordination within the new spatial limitations to which their body must adapt– are also affected. **Over time, and as a result of daily exercises intended to develop these capacities, a certain level of adaptation may be achieved, but a full and complete recovery is not possible.**

3.3.1.2. Post-traumatic stress, anxiety, and depression

– All individuals interviewed show clinical signs, to varying degrees in their intensity, frequency and specificity, consistent with symptoms and diagnoses of **anxiety, depression and/or post-traumatic stress**.

– Posterior psychological unease may take the form of **irritability, insomnia or problems falling asleep, hypersomnia or excessive sleep, nightmares, visual recall and repetitive and recurring thoughts associated with the traumatic event**.

– Likewise, there are frequent **feelings of frustration, sadness, anger, helplessness, guilt and shame, in addition to a sense of helplessness** associated with the disproportionate use of force and a perceived cruelty and will to do harm on the part of the officers responsible.

- Reactions whereby individuals attempt to avoid anything that may remind them of the traumatic event, often leading to a reduction in social interaction and an attendant **degree of isolation and withdrawal**, have also been noted.
- **Public space comes to be associated with danger.** Particularly during the period shortly after the incident, resulting **states of hyperawareness** –which is to say, states of sustained alert as a result of the perception of immediate danger– emerge. This is especially the case in the presence of police officers.
- Further to the psychological care that is given in all cases, **additional psychiatric care is frequently provided, arising from a need for pharmacological treatment.** This treatment centres on the individual and their experience, with the aim of reducing the intensity and frequency of symptoms, and providing guidance throughout the psychological process of post-trauma recovery.

3.3.1.3. A turning point. The grieving process and loss of trust

- **Disfigurement and loss of vision result in a grieving process**, in which the individual suffers pain and the physical, emotional and experiential toll specific to their case. Grief means realizing that what was once before will never be the same again. This complex grieving process plays out in different phases over a considerable period of time, and is different for each individual.
- **Treated individuals commonly display problems of self-image, self-confidence and self-esteem linked to their social image.** The face is the most visible part of the human body, and –among other functions– mediates our image, identity, and how others see us.



Ester Quintana · Abel Echevarria

3.3.1.4. Changes in identity and worldview

- In many cases, affected individuals lose confidence in themselves. Faced with a future different from the one that they had envisaged up until now, they begin to question their values and outlook on life.
- Of particular note are changes in perception and outlook related to the relationship between citizens and the state. **Mistrust in institutions and feelings of powerlessness are deepened as a result.**
- Likewise, changes in life goals and priorities occur. People go from leading a “normal” life to dedicating a large part of their time to raising awareness of repressive models of institutional violence. In other words, **they become even furthered committed to social justice and human rights.**
- **In terms of identity, affected individuals perceive of themselves as survivors and/or victims of police violence. Preventing the recurrence of this type of violence and participation as citizen-activists in the defence of human rights become fundamental pillars of the identity of some of those affected.**

3.3.2. Indirect or secondary victims: the family

- Indirect or secondary victims are understood as **those closest to the affected individual and who also suffer consequences of the incident.** Partners, family members and close friends may all be affected, often developing symptoms of psychological distress such as anxiety, guilt or stress which, in some cases, require professional care and support.
- **Significant changes in intrafamily relationships, which are reorganized as a result of the injury, have been observed.** In some cases, this is done in order to facilitate the individual's care. In others, the victims' difficulties in communicating what they have experienced to certain family members causes conflict and estrangement.

3.3.3. Exhaustion, revictimization and other psychosocial challenges associated with judicial proceedings

- **Judicial proceedings emerge as a key element around which the lives of those affected revolve.** The intrinsic lentitude of said proceedings is seen in conjunction with a perceived closing of ranks by police forces and an apparent complicity on the part of the legal system, and is experienced as a "David versus Goliath" battle which, in many cases, causes feelings of **hopelessness and powerlessness.**

- **A perception of a lack of investigative interest, or an interest which automatically calls the testimony of those affected into question, damages trust in legal institutions.**
- As a result of the above, an effect known as "**revictimization**" occurs. This refers to further aggressive behaviour exercised by the public authorities and institutions involved in the subsequent investigation of events, exacerbating and deepening the damage caused.
- Affected individuals **differentiate a sense of justice and its value in a broad sense from the concept of justice imparted by the judicial system.** Beyond the judicial proceedings, their focus in terms of moral and social redress centres on the investigation itself, in order to clarify and highlight those responsible.
- **Redress in such cases can refer to the corresponding proceedings and investigations, the assignation and acceptance of responsibility, and the questioning of the model of police violence** which has, as a consequence of its application, caused the serious, chronic or significant injury experienced.



Roger Español · Valentina Lazo

3.3.3.1. The restorative dimension of due process

– **Judicial proceedings may be partially restorative⁴³** in nature insofar as: **i)** an appearance in court entails that the state admits and recognizes that something has happened, and that it must be investigated; **ii)** justice, in the face of impunity, non-recognition or silence regarding events, is seen to be done; **iii)** contribution to social change in terms of rights, precluding further incidents of the same nature, can be made; **iv)** recognition in statements made to the court by authorities contributes to a mitigation of public distrust and restoration of individual's dignity, among others.



Óscar Alpuente, Nicola Tanno, Carles Guillot y Jordi Sallent · Francesca Oggiano



43. Carlos Beristain, *Diálogos sobre la reparación: qué reparar en los casos de violaciones de derechos humanos* (Quito: Ministerio de Justicia y Derechos Humanos de Ecuador, 2009)

CHAPTER 4

The judicial and institutional response: victims' rights to truth, justice, re-dress and guarantees of non-recurrence caused by rubber bullets



Fotomovimiento

– The obligation to investigate serious human rights violations in order to guarantee the protection of fundamental rights is one of the basic obligations of the state. In these terms, **the judicial investigation is a key resource for the clarification of the circumstances in which events –responsibility for which is attributable to the state– occurred**, and constitutes a necessary step for victims, their families and society as a whole to know the truth. It also represents the **mechanism through which to penalize those responsible, and establish measures that prevent further harm.**

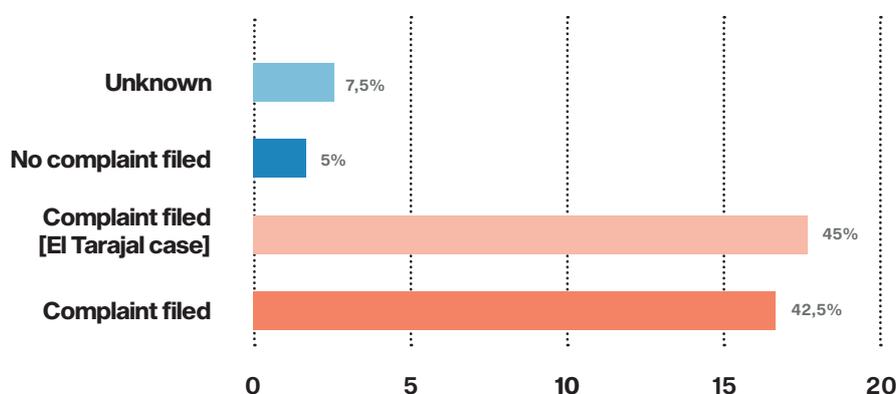
4.1. Impunity: lack of police investigation and closed ranks

– In none of the 40 cases identified between 2000 and 2020 as part of this research has the officer responsible for the shooting been convicted.

– Only in one case, that of Iñigo Cabacas, has a commanding officer (belonging to the Ertzaintza) been sentenced for criminally negligent homicide, as a result of not having halted the police intervention in which the young man died. This is the **only known conviction by a Spanish court in a case concerning the use of rubber bullets.**

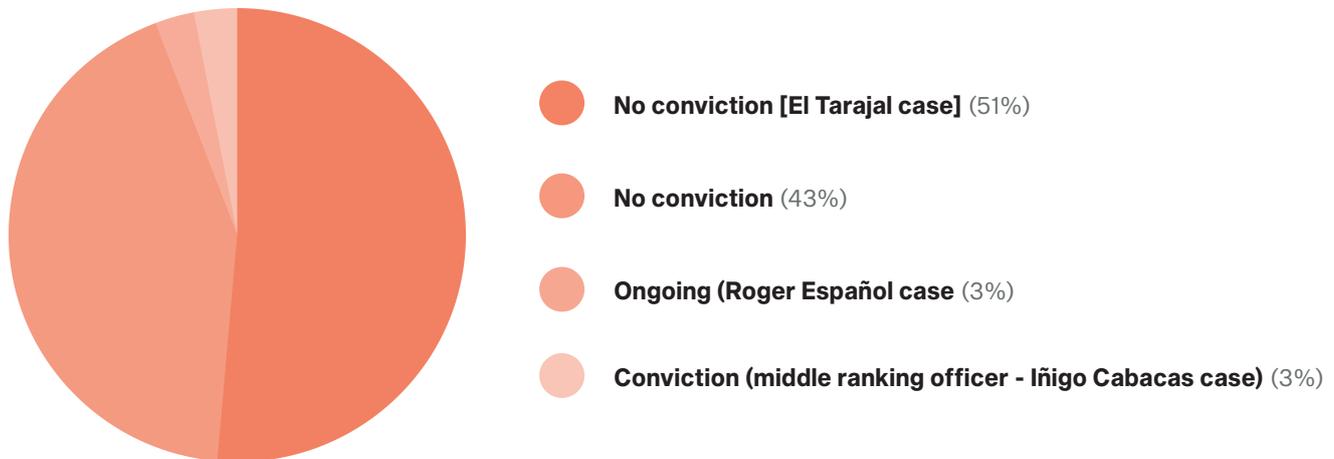
– In the **case of El Tarajal**, the charges brought against 16 agents of the Civil Guard were dismissed by the provincial Court of Cádiz. This decision was appealed by third-party claimants before the Supreme Court⁴⁴. At the time of writing, a decision regarding the appeal is yet to be reached.

Graph 8. Criminal complaints arising from rubber bullet impact in Spain (2000 - 2020)



44. Ángela Martialay, "Carpetazo definitivo a la investigación de El Tarajal: "Los guardias civiles actuaron con proporcionalidad", El Mundo, 28th of July 2020, available online at: <https://www.elmundo.es/espana/2020/07/28/5f1ff6cefdddfa7798b457e.html>

Graph 9. Outcome of judicial proceedings initiated in Spain due to rubber bullet impact (2000 - 2020)



– A culture of under-reporting has been observed, in addition to the numerous difficulties in bringing a case from investigation to trial and, moreover, to sentencing, given that few manage to reach that point. In this sense, it is important to highlight the role of the magistrates' courts. **Judicial proceedings in cases of police violence tend to be shelved in the investigation phase without ever reaching trial, despite the existence of clear evidence of criminality.**

– In order to analyse the patterns identified as common to the investigation of criminal harm caused by rubber bullet use, four representative cases have been selected as part of our research. Specifically, three civil judicial proceedings have been analysed: those relating to the cases of **Ester Quintana**, **Iñigo Cabacas** and **Carles Guillot** (which led to a criminal trial and a judicial review), together with documents and edicts from the criminal trial relating to the case of **Roger Español**, which is still ongoing.

– Among the matters analyzed are: **1)** the impossibility of identifying the agent who fired the shot and, consequently, the impossibility of a conviction; **2)** the closing of ranks and lack of accountability sought by commanding officers, and **3)** the role of the judiciary in the investigation.

– **In the case of Ester Quintana, it was not possible to determine what type of projectile caused her injuries, or which specific agent fired at her.** This shows the impossibility of guaranteeing the right to the truth, even in court. Nevertheless, the court highlighted in its ruling that the recognition of the injuries caused, made by the General Directorate of Police of the Generalitat at the time of the trial, contradicted the thesis initially defended by the Ministry of the Interior, which strongly stated that, at the time and place where the events occurred, no police projectile had been fired.

Stop Bales de Goma's archive



- Ester Quintana lost her left eye as a result of the impact of a police projectile during the day of the general strike on the 14th of November 2012, in Barcelona.
- An unsatisfactory police investigation was also highlighted in **the judgment decreed in the Iñigo Cabacas case, in which the court criticized the lack of investigation of the facts by the police force itself, positing that this made it difficult to clarify what happened.**
- **Iñigo Cabacas** was a 28-year-old male who, on the 5th of April 2012, was in the bar district of María Díaz de Haro in Bilbao, where he had gone to celebrate the victory of Athletic Club de Bilbao. After receiving several calls warning of a fight in the area, the Ertzaintza decided to send in riot police officers - a decision later questioned in court, and one which resulted in serious injury and the death in hospital four days later of Iñigo, following the impact of a rubber bullet to the skull.
- In the case of **Carles Guillot**, although an agent of the National Police Corps declared during investigations that he was the only officer present in possession of a shotgun with rubber bullets, and that he made use of it⁴⁵, the Barcelona Magistrates' Court number 21 provisionally dismissed charges on account of the absence of a known guilty party. **The Court argued that the perpetrator could not be identified and that, even were identification possible, they should be exempted from liability, in considering that the officer in question acted properly, that events transpired in an unforeseen fashion, and that there were mitigating circumstances in the form of "the legitimate fulfilment of duties"**⁴⁶.
- Carles Guillot lost his right eye on the 17th of July 2001 during the eviction of the *Kasa de la Muntanya* social centre in Barcelona, of which he was a member. Upon hearing news of the eviction, Carles decided to go to the location with two friends to help move belongings. As he arrived he was hit by a rubber bullet, fired by the National Police, which caused the loss of his right eye, as well as multiple fractures to his nose and face.



45. Magistrates' Court 21 Barcelona, ruling dated 25th of September 2003.

46. Ruling of the Provincial Court of Barcelona, 5th Section, dated 17th of March 2004.

- The **ECHR** has already called Spain to attention for its failure to investigate complaints of police mistreatment on the premise of the impossibility of identifying the officers involved. The recent ruling **López Martínez v. Spain** (March 2021), regarding the case of a woman who was forcibly removed from a bar and injured following the “Rodea el Congreso” (Surround the Congress) protests in Madrid in 2012, considers that the authorities did not carry out an effective investigation, on account of their inability to identify and question the police officers involved, and their failure to adequately assess the proportionality of their actions.
- Against this background of opacity, the case of **Roger Español** has acquired a particular relevance. It is the first time that it has been possible to identify (by Irídia - Center of Defense of Human Rights on the basis of contributions from members of the public) the National Police Corps officer who, according to the case for the prosecution, shot Mr. Español up to three times during the referendum on the 1st of October 2017 in Barcelona, causing him to lose vision in his right eye.
- **However, despite having specifically pinpointed the officer and the moment at which shots were fired, neither the commanding officers nor the other officers present at the scene identified him as the perpetrator. Neither, for that matter, did the National Police Corps. This is a repeated and recurring pattern in all cases of police violence.**



Iñigo Cabacas · Personal archive of Iker Malariaga, Iñigo's friend

4.2. Chain of command and responsibility

- Another of the key limitations identified in trials involving cases of police or institutional violence is the **inability to move beyond the paradigm of direct responsibility**.
- **The case of Iñigo Cabacas was an exception, in that it managed to place the focus on the hierarchical structure of the police forces, and establish the responsibility of the acting commanding officers** for the actions of the agents under their charge. The court determined in this case that the police operation was improper and unjustified.
- **Commanding officers have a special position as guarantors of the operations carried out under their command, since they have the power to authorize the use of riot control equipment and, therefore, are responsible for controlling its use.** This is established by the Circular concerning the use of riot control equipment, dated 3rd of September 2013.

4.3. The road to redress. The struggle of victims to tell their side of the story and to guarantee non-recurrence

- At the governmental and the institutional level, **there is currently no active channel for redress that can be initiated ex officio** as soon as the case of a person injured as the result of a police intervention is known about.

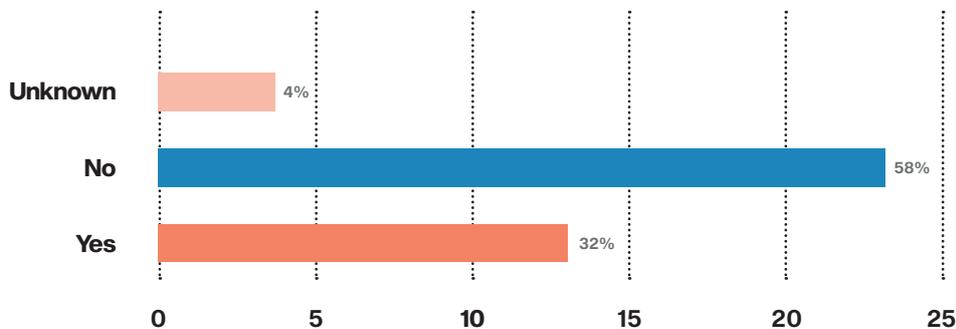


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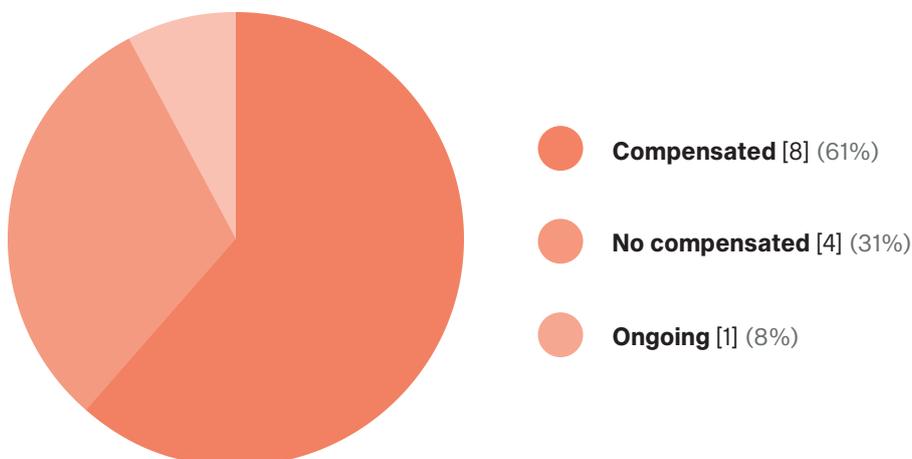
– Of the 40 victims of rubber bullet use in Spain between the years 2000 and 2020 identified in the course of our research, **13 requested financial compensation**, either as part of criminal proceedings or in addition to them. Of these 13, to date, **8 have received compensation**; in the case of 4 others, such requests have been denied, and one is still under consideration. In an additional 4 cases, it was not possible to establish this information

– **Five (5) of the 8 victims who received compensation did so by reaching a settlement with the Generalitat of Catalonia**, indicating that political will is essential for providing, at the very least, a minimum of financial redress.

Graph 10. Victims who have demanded financial compensation in consideration of the role of public authorities in Spain (2000-2020)



Graph 11. Victims who have obtained compensation for the damage caused by a rubber bullet in Spain (2000-2020)



- Evidently, **financial compensation** is just one part of the victims' right to comprehensive redress, especially when the injuries caused have severely affected the individual's life plans, constraining their future earning capacity. However, **this is not the only form of redress: a recognition of events, and a guarantee of non-recurrence, are two further fundamental pillars.**
- If there is one thing that all victims agree on, it is the **need to know the truth: the who, the how, and the why.** This is all the more important **given the patent, constant institutional denial of any events that call the police forces into question,** in such a way that official accounts exonerate and even, on occasions, justify (on the premise of the legitimate fulfilment of duty) a decision by police which has life-changing consequences for the individual.
- In other cases, such as that of Carles Guillot, **judicial and administrative authorities have come to hold the victim himself responsible for being at the scene of the events, "knowing the risk that this entailed and, therefore, accepting it"**⁴⁷. This argument maintains that protesters themselves are responsible for any possible police malpractice, and ignores the international and constitutional protection of the fundamental rights of assembly, association and freedom of expression that make up the right to peaceful protest. Despite losing his eye, Carles has never received compensation.



Carles Guillot · Stop Bales de Goma's archive



⁴⁷. Order issued by the Spanish Council of State, dated 19th of January 2006.

CHAPTER 5

Conclusions

- 1** International and national legislation establish that the use of force must be governed by the principles of legality, necessity, precaution, proportionality, non-discrimination, and accountability.
- 2** Rubber bullets are fired with an energy of 144 joules, making them potentially lethal and highly likely to cause serious injury, which can have long-term and debilitating consequences for those affected.
- 3** Of the total of 40 victims of rubber bullet use documented in Spain between the years 2000 and 2020, at least one died from the impact of a rubber bullet to the head. In 14 cases, the use of rubber bullets against people who were swimming was a decisive factor in their death by drowning. Furthermore, of the total of 40 people affected, 24 needed medical treatment, 15 of whom suffered the loss or loss of use of a body part (damage of the eyeball in 7 cases, and loss of vision in one eye in 4).
- 4** According to International Human Rights Law, rubber bullets should not be used indiscriminately nor by default and, by extension, should not be used in any case to disperse a demonstration or rally. Likewise, in no case should people who are swimming or crossing a border fence be shot at.
- 5** According to the United Nations (UN) and the Organization for Security and Cooperation in Europe (OSCE), indirect firing of projectiles - causing them to ricochet off the ground before hitting people - is not permitted, since the unpredictability of their trajectory implies an unacceptable risk. However, use of ricochet is habitual among the National Police Corps and the Civil Guard.

- 6** The UN Guide to "less-lethal" weapons prohibits shooting at the head, neck, chest and groin, as these are areas where impact can cause particularly serious injury. However, more than half of the victims of rubber bullet use documented in Spain as part of our research (18 people, 69% of the 26 who were shot), suffered impact to the head area, while 5 others were suffered impact to the upper body.

- 7** Any crowd control weapon capable of causing death, such as rubber bullets, must be subject to the same post-incident investigation and legal controls as a firearm. In the case of rubber bullets, both the absence of identification marks on the ammunition and on the weapon, and the unpredictability of the projectile's trajectory once fired, make it impossible to guarantee its traceability. It is an obsolete weapon, the use of which is impossible to align with the minimum international standards of accountability.

- 8** Information on the characteristics of the weapon, the projectile and the energy reducer used by the National Police Corps and by the Civil Guard, as well as the tests and impact reports carried out by the Ministry of the Interior on rubber bullet use, have neither been made public nor are they accessible. A lack of access to information regarding the characteristics of these weapons and attendant accessories and ammunition has clear consequences for accountability and the means available to the public to determine whether use of such weaponry has been made according the international principles of legality, necessity, proportionality and precaution that govern the use of force.

- 9** There have been no judicial proceedings arising from an injury and/or death caused by a rubber bullet fired by an officer of Spanish state security forces in which the security force the officer belongs to has facilitated the identification of the agent responsible. In none of the 40 cases studied has the officer directly responsible been convicted.
- 10** The use of rubber bullets for the purpose of punishment, retaliation or discrimination can be considered as torture or cruel, inhuman or degrading treatment, according to the definition of the Convention for the prohibition of Torture.
- 11** Since the 1980s, several European Parliament Resolutions have clearly called for the ban on plastic bullets in the countries within the EU. Other international organizations such as the Committee Against Torture and the United Nations Human Rights Committee, in their country comments addressed to the United Kingdom, have clearly outlined steps for their review and eventual prohibition. More and more countries have decided to ban this type of weaponry. In Europe, Austria, Denmark, Finland, Ireland, Norway, Romania and Sweden stand out, in addition to the vast majority of German federal states.
- 12** Rubber bullets' high potential for harm and the impossibility of predicting their trajectory led to the prohibition of their use by the regional police forces of Catalonia (Mossos d'Esquadra), Navarre (Chartered Police) and the Basque Country (Ertzaintza). However, they continue to be used by the National Police Corps and Civil Guard across Spanish national territory.
- 13** There is no official registry of rubber bullet casualties in Spain. Likewise, the investigations carried out have not guaranteed victims' rights to truth and justice. In addition to a strong sense of lack of redress, a perception of state impunity causes those affected to feel re-victimized.

CHAPTER 6

Recommendations

The organizations that have endorsed this investigation propose a series of recommendations with the aim that the operations of state security forces be brought into line with international standards regarding the use of force, governed by international human rights law, and so that the victims' rights to the truth, justice, redress and non-recurrence of the harm caused by the use of rubber bullets are guaranteed.

For the Spanish Government:

1. That the use of rubber bullets by state security forces and bodies be prohibited by law, on account of their potential to cause harm, as well as their uncontrollable and indiscriminate nature and lack of traceability, factors which endanger the general public's basic human rights and physical wellbeing.

For the parliamentary groups in the Congress of Deputies:

1. That a non-binding motion be tabled, urging the government to prohibit the use of rubber bullets by state security forces and bodies, on account of their potential to cause harm, as well as their uncontrollable and indiscriminate nature and lack of traceability, factors which endanger the general public's basic human rights and physical wellbeing.
2. That the creation of an investigative committee be agreed, with the aim of clarifying the casualties of rubber bullet use, in order to evaluate the impact on the general public of the use of such weaponry, as well as to evaluate the fitness-for-purpose of current mechanisms of oversight, evaluation and penalization applicable to police forces in the areas of law and order or crowd control.

For the Public Prosecution Ministry:

1. That a specialized prosecutor's office for institutional violence be created, with oversight over all legal proceedings relating to the matter - including cases of rubber bullet use, and use of other kinetic impact projectiles (KIP) - and the ability to intervene proactively in said proceedings, defending the rights of victims.
2. That the Public Prosecutor, as a guarantor in upholding the law, be seen to play a proactive role in encouraging the investigation of cases of institutional violence, and specifically cases of rubber bullet and kinetic energy projectile casualties, with the aim of determining the parties responsible in each given case.
3. That specific human rights training be offered to prosecutors, specifically in relation to the Istanbul Protocol, also known as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is the first set of rules to outline what constitutes torture and its consequences.

For the General Council of the Judiciary:

1. That professional training plans on the subject of human rights, police forces and care for victims of institutional violence be put in place, so as to guarantee that the judicial process offers full redress, and to ensure action is taken without causing further harm, in consideration of victims' rights to truth, justice, redress and guarantees of non-recurrence.
2. That action plans be drawn up for Magistrates' Courts, with the aim that offences relating to institutional violence, and to injuries or deaths allegedly caused by police weapons or projectiles, be investigated exhaustively, rapidly and efficiently. To this end, it would be desirable to make recommendations for measures which guarantee the thoroughness of investigative proceedings, given that both the custody of the relevant weapons and a large part of the body of evidence would be held by one of the parties involved.

