

SWITZERLAND

FOREWORD

Amnesty International (AI) has received reports from the Canton of Geneva indicating that police officers are unaware of the provisions of the United Nations Convention on the Rights of the Child and have violated provisions falling under Articles 2 and 37 of the Convention, as well as Geneva's cantonal legislation with regard to the treatment of children in police custody.

The two cases described in this compilation of AI documents - the cases of 'Visar', a 14-year-old Kosovan refugee and of 'Didier', a 17-year-old Angolan - illustrate AI's concerns.

■ External AI document issued on the case of 'Didier' in July 2000

AI INDEX: EUR 43/04/00
July 2000

PUBLIC

**SWITZERLAND
ALLEGED ILL-TREATMENT OF
A 17-YEAR-OLD ANGOLAN
BY GENEVA POLICE**

The case of "Didier"¹

Amnesty International is concerned about the alleged ill-treatment by Geneva police officers of "Didier", a 17-year-old Angolan, in November 1999. A secondary school pupil, Didier lives in Geneva with his older sister, his legal guardian. He claims that three police officers subjected him to physical and racist abuse after detaining him on suspicion of having participated in a street fight. Amnesty International is further concerned that the police interrogated Didier, a minor, without the presence of his legal guardian or any other adult representing his interests, and then kept him in detention at a police station. The organization is also concerned that a criminal complaint which Didier has lodged against the police risks being filed without a full judicial investigation being carried out into his allegations and without Didier being questioned about them.

In a complaint lodged with the Geneva Attorney General (*Procureur général*) on 21 January 2000, Didier accused three Geneva police officers of abusing their authority, causing bodily harm and subjecting him to racist insults (*abus d'autorité, lésions corporelles et injures racistes*). The Attorney General then opened a preliminary investigation, entrusted to the police, under his direction. However, on 11 April 2000, the Attorney General ruled that there were no grounds to justify further investigation and ordered the closure of the dossier. Thus, Didier's complaint was not allocated to a judge of instruction for a full investigation. Amnesty International also understands that,

¹The true name is withheld upon request.

although the accused officers were questioned in the course of the preliminary investigation, Didier himself was never questioned about his allegations. An appeal against the Attorney General's decision was examined by a Geneva court (*chambre d'accusation*) on 14 June 2000. At the time of writing the court's ruling is still pending.

In interviews with local media, Didier said that at approximately 7pm on 3 November 1999 he and two friends witnessed a fight between a man and a woman in a street in the Geneva district of Carouge. When one of Didier's companions approached the couple with the intention of telling the man not to hit the woman, the man turned his anger on the friend who momentarily fled the scene. Didier said that the man then knocked the heads of the two remaining boys together and a violent struggle ensued between the man and all three youths. According to Didier's version of events, a short while later, having left the scene of the fight, the youths were stopped by a police unit. They were pinned against a wall and handcuffed with their hands behind their backs.

Didier claimed that he was thrown to the ground and hit with truncheons by more than one officer. Separated from his two friends, he was then placed in a police vehicle and taken to Carouge police station. He maintained that during the transfer he was again hit with truncheons and that on several occasions he was called a "dirty nigger"². He said he pleaded with the officers to stop hitting him and that traces of his blood were left on the inside of the police car window.

On arrival at the police station Didier was taken to a cell where he alleged that -- while still handcuffed -- he was kicked and subjected to further beatings with truncheons. He claimed to have lost consciousness and when he revived found that he had been stripped to his underwear. He said that he was subsequently questioned by a female officer -- who was not part of the arresting team -- and examined by a doctor who prescribed painkillers. However, Amnesty International is concerned to note Didier's claim that the medical examination did not take place in private but in the presence of a police officer. On 6 November 1999, within days of his release, he also sought medical treatment at a local hospital where he complained that he was suffering from headaches and had been assaulted by the police.

While Didier was detained at the police station his sister arrived to deposit his identity card, in response to a police request. However, it appears that, against the provisions of the law, she was not informed that she had the right to be present when Didier was questioned and nor was Didier informed that he had the right to request her presence. Therefore, he was questioned without the presence of any adult to represent his interests. His sister was allowed to speak to him briefly later that night. He spent the night

²« sale nègre » - *Le Courrier*, 24 February 2000.

in a police cell; his two companions, who had also been escorted to the station, were released. Didier was released the following morning after appearing before a judge attached to the Juveniles Court where he apparently learnt for the first time that he was accused of resisting the police ("*opposition aux actes d'autorité*"): one of the officers also accused him of causing him an injury (see below). On 26 January 2000 the judge acquitted him of these charges, apparently on the grounds that the versions put forward by the various parties concerned were too conflicting to allow the truth to be established.

According to statements which the arresting officers reportedly made to the Juveniles Court and in subsequent statements attributed to an official police spokesperson, the police officers had gone to the scene of the street incidents of 3 November following a report by an off-duty colleague who said he had observed three youths hitting a man before fleeing the scene. The police also reported that various statements indicated that the man had first attacked two of the youths who had then run off, returning with a third and it was then that they attacked the man. According to the police, Didier and his friends were escaping when intercepted by the police officers but Didier was the only one to have put up a struggle. He was further said to have stuck an unidentified sharp object into the thumb of one of the officers, an allegation which Didier categorically refutes, stating that he was not in possession of such an object on the evening in question. The police officers reportedly stated that Didier continued to resist once inside the police vehicle. They further indicated that they had been obliged to use a certain degree of force because he had resisted arrest.

In March 2000, following his acquittal, police officers carried out a search of Didier's room in the family home, while Didier was at school. Later that month Didier received a summons to report to the police and complied, assuming the summons to be in connection with the investigation into his complaint against the police and believing that he would be questioned about his allegations. However, Amnesty International understands that, on arrival at the police station, he was immediately detained and accused of intimidating younger children in order to obtain goods. The police questioned him about this alleged offence before transferring him to a prison establishment for juveniles where he was held overnight. The next day he was brought before a judge in the Juveniles Court who, however, instantly dismissed the case against him. Fears have been expressed that the actions of the police might have been designed to intimidate Didier in view of his complaint against the police.

Amnesty International is urging that the relevant Geneva authorities ensure that a thorough and impartial investigation, to include questioning of Didier himself, be carried out into his allegations of ill-treatment and that special attention is paid to the provisions of Articles 2 and 37 of the United Nations Convention on the Rights of the Child (see below), to which Switzerland is a party and with which it is, therefore, bound to comply.

UN Convention on the Rights of the Child

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

■ **Extract from *AI Concerns in Europe: July - December 2000, Switzerland*
[AI Index: EUR 01/001/2001], issued March 2001**

There was a significant development in the case of “Didier” ...

... On 20 August, following an appeal lodged by “Didier”, a Geneva court (*chambre d'accusation*) overturned the Geneva Attorney General's April decision to close the dossier and ordered that an investigating magistrate be assigned to the case to carry out

a full inquiry, to include - as the appeal requested - the questioning of the boy himself and other relevant witnesses and, if necessary, to arrange a formal meeting (*une confrontation*) involving Didier and the accused officers.

■ UPDATED INFORMATION

Following the *chambre d'accusation's* August 2000 ruling, an investigating magistrate was appointed to carry out an inquiry into Didier's complaint. On 13 September 2001 the investigating magistrate returned the dossier to the Geneva Attorney General, having informed Didier's lawyer that there was insufficient evidence (*faute de charges suffisantes*) to pursue charges against the officers under investigation. On 11 October 2001 the Attorney General decided once again to archive the case.

On 22 October 2001 Didier deposited an appeal with the Geneva *chambre d'accusation* against the Attorney General's latest decision arguing, among other things, that the judicial inquiry had not been complete. The appeal further argued that there was sufficient evidence to warrant charging the officers. The *chambre d'accusation* examined the appeal in December 2001. Its ruling was expected within the first months of 2002 but was still pending at the end of January 2002.

AI welcomed the questioning of Didier and other relevant witnesses as part of the judicial inquiry, as requested in Didier's original appeal and in the *chambre d'accusation's* subsequent ruling of August 2000.

AI noted that one of the witnesses interviewed by the investigating magistrate was a direct eyewitness to Didier's arrest on the street and also saw him inside the police station. This witness (one of the two friends detained briefly with Didier but released without criminal charges), testified that he had witnessed officers hitting Didier when he was on the ground and when he was in the police vehicle and that he had also heard officers racially abuse him. He also testified that he had seen Didier with visible head injuries and bleeding inside the police station.

AI is concerned that this witness evidence may not have been taken into full account in the judicial investigation.

AI is also concerned that the investigating magistrate did not pursue all the directives issued by the *chambre d'accusation* in August 2000.

AI noted that the investigating magistrate justified her conclusion that there was insufficient evidence to pursue charges against the officers on the grounds that the

statements of Didier and the police appeared “contradictory” and that the testimony of third parties had not made it possible to establish the exact events which had taken place³.

Under these circumstances AI is concerned that the magistrate apparently did not at any point arrange a formal meeting (*une confrontation*) between Didier, the eyewitness to events, and the accused officers - in her presence and that of their legal representatives - in order to try to clarify the ‘contradictions’ between the evidence of the complainant and the accused.

AI is also concerned to note that the clothes worn by Didier at the time of the alleged assault, said to be blood stained and offered as evidence at the time of the original complaint in January 2000, have never been subjected to forensic examination in the course of the judicial investigations.

AI has urged that the *chambre d’accusation* overturn the Attorney General’s October 2001 decision and that the dossier be returned to the investigating magistrate in order that a full inquiry be carried out, taking into full and proper account the eyewitness evidence as well as all the directives issued by the *chambre d’accusation* in August 2000, including a *confrontation* of all the relevant parties and forensic examination of the clothing worn by Didier at the time of the alleged assault.

AI has noted that during the (UN) Human Rights Committee’s examination in October 2001 of Switzerland’s second periodic report on its compliance with the International Covenant on Civil and Political Rights, committee members raised questions and expressed concern about the case of Didier.

³: “ ... les déclarations de votre client et celles des policiers apparaissent contradictoires et les témoignages des tiers ne permettent pas d’établir le déroulement exact des faits...” [Extract from the investigating magistrate’s September 2001 letter formally notifying Didier’s lawyer of the closure of the investigation].

■ External AI document issued on the case of 'Visar' in December 1999

AI INDEX: EUR 43/03/99
December 1999

PUBLIC

**SWITZERLAND:
ALLEGED ILL-TREATMENT BY GENEVA POLICE**

The case of "Visar"⁴

Amnesty International is concerned about the alleged ill-treatment by Geneva police officers in October 1999 of a 14-year-old refugee from the Kosovo province of the Federal Republic of Yugoslavia, identified only as "Visar" in the press. Visar, who has lived in Switzerland with his family for some nine and a half years, was detained in October on suspicion of having participated in a street disturbance. He claimed that he was an innocent bystander but that police ordered a police dog to attack him, even though he said he was making no attempt to flee, subjected him to physical and verbal, including racist, abuse, and interrogated him without his parents being notified or given the opportunity to be present, in violation of the law. As a result of an administrative complaint lodged with the Geneva Chief of Police by Visar's father, two administrative investigations were set in motion.

In interviews granted to the Swiss newspaper, *Le Courrier*⁵, Visar and his father said that on the night of 1 October 1999 Visar and a friend were standing at a bus-stop in the Geneva suburb of Le Lignon when they witnessed an argument unfold between a group of older youths and a local resident. The argument -- which was taking place further down the road, some 15 metres away from where the two were standing -- reached such a pitch that the police were called. As soon as they arrived the group of youths and his friend fled the scene but Visar remained at the bus-stop. He claimed that a police officer, apparently believing that he was part of the gang involved in the disturbance (an allegation he categorically refutes), ordered a police dog to attack him even though he was making no attempt to flee the scene: the dog seized and bit his right thigh, only withdrawing after repeated commands from its handler. He was thrown to the ground by police officers and then, with one officer on top of him, handcuffed. He was placed in a police car and taken to Blandonnet police station.

⁴ Full name withheld upon request

⁵ Edition of 8 November 1999.

Visar said that en route to the police station the police officers made derogatory, including racist, remarks about him and his family. On arrival at the police station he was made to strip and his belongings were searched. He was then left to wait in what he described as a very cold room dressed only in a T-shirt and trousers until an officer came to take him for questioning. He maintained that the police officer struck him more than once over the back of the neck with a bottle of water. He further maintained that police officers tried to coerce him into admitting participation in the street disturbance by stamping on his feet and by squeezing him so tightly around the neck that he had difficulty in breathing and feared he was going to die. After the interrogation the police officers called in a doctor to examine the dog bite.

Visar's father was eventually contacted by the police and came to the police station to collect him. The pair were made to sign three forms before being allowed to leave. The father maintained that they did not know what the forms were for, and that they were not given copies. Visar does not appear to have been charged with any offence.

On 13 October 1999 Visar's father lodged an administrative complaint against three police officers (attached to Blandonnet police station) with the Geneva Chief of Police. The complaint was accompanied by a medical certificate, issued by Visar's family doctor on 3 October 1999, and which recorded "several wounds" (*«des nombreuses plaies»*) to the inner part of his right thigh and two red marks, one on the back of his neck and one on the right side of his chest, and which indicated that he appeared psychologically traumatized by the incidents.

Two investigations were subsequently opened: an internal disciplinary investigation and an investigation under Article 38 of the Geneva Law on the Police. Under the provisions of this article, the Chief of Police submits, for review, copies of complaints of ill-treatment against the police together with relevant existing police reports, to an individual appointed by the Geneva Government but from outside the administration itself. The post is currently held by a former member of the Geneva Government who, in accordance with Article 38, must inform the Head of the Cantonal Department of Justice, Police and Transport (DJPT) if he concludes that there has been police ill-treatment in the case in question. The Head of the DJPT then decides on further action.

Amnesty International is asking the cantonal authorities for cooperation in informing the organization of the progress and eventual outcome of these investigations, and of any further administrative or criminal proceedings arising from them and urging them to compensate Visar, if the investigations establish that there was ill-treatment and excessive use of force. The organization is also urging that in their investigations the authorities pay special attention to the provisions of Articles 2 and 37 of the UN Convention on the Rights of the Child (see below), to which Switzerland is a party and with which it is, therefore, bound to comply.

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**■ Extract from *AI Concerns in Europe: January - June 2000, Switzerland*
[AI Index: EUR 01/03/00], issued September 2000**

In January, the Geneva Chief of Police responded to AI inquiries concerning the allegations of ill-treatment made against the Geneva police by a 14-year-old Kosovan boy in October 1999 (See AI Index: EUR 01/01/00). He acknowledged that the boy had been bitten by a police dog but stated that police had made only legitimate use of the dog, and that the officers accused of physical assault and racist abuse formally refuted the allegations. He confirmed that the full police dossier had been referred to the relevant administrative and judicial bodies.

AI understands that an investigating magistrate is currently carrying out an inquiry into the boy's allegations and that, at the same time, a judicial investigation is under way into a complaint lodged against the boy by the police, accusing him of calumny.

■ UPDATED INFORMATION

AI Index: EUR 43/001/2002

Amnesty International January 2002

In January 2001 the investigating magistrate informed the police officer who had set the police dog on Visar that he was under specific investigation (*inculpé*) in connection with a possible offence of abusing his authority as a police officer (*abus d'autorité*) and with causing bodily harm (*lésions corporelles simples*). The officer had by then left the police force for other employment. He was accused of sending the dog into action immediately on arrival at the scene of events and seeing a group of 15 to 20 youths, without having made any attempt to check the accuracy of the information passed on by local inhabitants via a phone which had indicated that a group of youths were damaging small street-stands containing newspapers (*caisettes de journaux*) and cars. The officer said that he gave a warning that he was about to unleash the dog. Apparently, he subsequently found only that some of the small newspaper stands had been overturned. As there was no evidence of a crime having been committed, the officer's use of the dog - aware that it was likely to cause injury to anyone it intercepted - appears a wholly disproportionate use of force. AI is also concerned at reports it has received indicating that the Canton of Geneva has issued no regulations governing the circumstances in which police dogs may be used by police officers.

During a *confrontation* between Visar and the accused officers (that is, a meeting taking place in the presence of the investigating magistrate and the legal representatives of the various parties), one of the officers apparently confirmed that he had handcuffed Visar while he was lying on the ground - that is, after the boy had been brought down and injured by the police dog, and when it would appear that he was posing no threat or danger. In October 2001 Visar's lawyer requested, therefore, that this officer also be placed under specific investigation in connection with a possible charge of abuse of authority. However, this request was rejected by the investigating magistrate.

The investigating magistrate ended the criminal investigation against the police in January 2002 and returned the dossier to the Attorney General's office. At the time of writing it is not yet known whether the Attorney General will decide to pursue further criminal proceedings against the police.

AI understands that proceedings relating to the accusation of calumny initially made against Visar by the police were suspended while the criminal investigation was carried out against the police.