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£FEDERAL REPUBLIC OF GERMANY

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Introduction

During the period January 1992 - March 1995 Amnesty International received over 70 reports of separate incidents in which it was alleged that German police officers had used excessive or unwarranted force in restraining or arresting people, or had deliberately subjected detainees in their custody to cruel, inhuman or degrading treatment or punishment. Medical evidence shows that victims have suffered broken teeth, sprains and bruises, and in several cases broken bones - injuries consistent with the victims' allegations that they had been punched, kicked or struck with a police baton. In at least two cases the extent of the injuries suffered by victims was so severe, and the evidence that they were inflicted deliberately or repeatedly or intended to cause intense suffering so overwhelming, that Amnesty International has referred to them as cases of ill-treatment amounting to torture. In the majority of cases the alleged ill-treatment took place during arrest; in some cases detainees allege that they were ill-treated on their way to a police station or at the station itself.

In all but a handful of the cases brought to the attention of Amnesty International the victims were foreign nationals or members of ethnic minorities. In many instances the alleged ill-treatment appeared to have been racially motivated. Over half of all cases have involved officers of the Berlin¹ police force. Although criminal investigations have been opened in all the cases reported to Amnesty International, many of the officers allegedly responsible have escaped prosecution and few, if any, have faced disciplinary sanctions. None of the foreign or ethnic minority victims whose cases are described in this paper have been compensated for the injuries they have suffered.

The information on the cases in this report has come to Amnesty International from the victims themselves or from their relatives or friends, from lawyers, non-governmental organizations and from press reports. Amnesty International has obtained additional information on many individual cases of alleged ill-treatment from medical records, court documents and government authorities. The organization has interviewed many of the victims involved.

Amnesty International has brought many cases of alleged ill-treatment to the attention of the German authorities and has reported on its concerns extensively.² However, in some cases the victims have expressly asked the organization not to raise their cases with the authorities or to make them public

¹Berlin is one of the 16 constituent regional states, or Länder (pronounced like `lender') which make up unified Germany. The others are: Baden-Württemberg, Bavaria, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North-Rhine/Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia. Each Land (pronounced `lant') has its own elected parliament and government. The Minister of Justice in each Land government is responsible for the administration of justice within the territory of that Land, and the Minister of Internal Affairs for the police.

²See Federal Republic of Germany: The alleged ill-treatment of foreigners - a summary of recent concerns (AI Index: EUR 23/03/93); Federal Republic of Germany: Police ill-treatment of detainees in Hamburg (AI Index: EUR 23/01/94); Federal Republic of Germany: The alleged ill-treatment of foreigners - a summary of concerns in the period June - December 1993 (AI Index: EUR 23/02/94); Federal Republic of Germany: A summary of concerns in the period May - October 1994 (AI Index: EUR 23/08/94).

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because, rightly or wrongly, they fear repercussions. (Some have said, for example, that they fear that intervention by Amnesty International could jeopardise a pending application for asylum, others that if their cases were to become public knowledge they could become the targets of racist attacks or suffer reprisals from the police.)

Amnesty International is not in a position to confirm, or reject, the accuracy of all the allegations made by individuals. However, the consistency and regularity of the reports it has received lead the organization to conclude that the problem of police ill-treatment is not one of a few isolated incidents. On the contrary: after drawing together the information it has collected on individual cases over the past three years, Amnesty International believes that a clear pattern of police ill-treatment of foreigners and members of ethnic minorities emerges in Germany, particularly in Berlin. For the most part the German authorities have refused to acknowledge the existence of this pattern and have failed to carry out effectively obligations imposed on them in international treaties, namely the obligation to ensure that the rights of all persons in police custody are respected, to conduct prompt and impartial investigations into allegations of ill-treatment in all cases, to bring to justice those responsible, to compensate and rehabilitate the victims and to prevent such ill-treatment from occurring in the future.

Some of the cases described in this report have been documented before in Amnesty International publications. They are cited in this document again in order to emphasize particular features they share with other cases. Where possible they have also been updated with new information.

1. The nature and extent of police ill-treatment

1.1 The victims

In the vast majority of cases brought to Amnesty International's attention the victims of alleged police ill-treatment have been foreign nationals, including asylum-seekers and refugees, or members of ethnic minorities. (At the end of 1992 there were 6.5 million foreigners living in Germany. This figure represented 8% of the total German population of 81 million. In Berlin the proportion was 11%.³) Many of the victims allege that they were subjected to racist abuse by the officers who ill-treated them. This leads Amnesty International to conclude that, in these cases at least, the ill-treatment in question may have been racially motivated.

That so many of the victims of alleged police ill-treatment are foreigners or members of ethnic minorities is particularly alarming when viewed against the backdrop of anti-foreigner sentiment and racist violence which have scarred Germany since unification. (Official statistics record that over the period 1992-94 there were over 14,000 racially motivated crimes in Germany, including eight killings, 44 attempted killings, over 1,000 attacks of arson and almost 1,700 cases of physical assault.⁴) At precisely the time that foreign nationals or members of ethnic minorities, more than any other section of the German population, have needed to feel confident that the police are there to protect them, many have instead felt

³Statistisches Jahrbuch der Bundesrepublik Deutschland, ("Statistical Yearbook of the Federal Republic of Germany"), September 1994, pages 64 and 72.

⁴The figures for 1992 and 1993 have been taken from the 1993 Report of the Federal Office for the Protection of the Constitution and from an article in the *Frankfurter Rundschau* of 6 February 1993. The 1994 figures were provided by the Federal Criminal Police Office and published in parliamentary replies by the Federal Government over the period March 1994 - February 1995.

The actual number of racially motivated crimes may, in fact, be much higher than these, or other, official figures suggest, as many foreigners or members of ethnic minorities may not report crimes against them or if they do, the crime may not be officially classed as racially motivated.

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a police officer's fist, boot or baton.

The case of Habib J. (Berlin)

On 24 December 1992 at approximately 3.45pm the number 227 bus arrived at its destination in the Moabit district of Berlin. Its last passenger, Iranian student Habib J., had remained on the bus having fallen asleep during the journey. Suddenly Habib J. was awakened by blows to his face and body accompanied by shouts of "Bloody polack, I'll kill you! Why didn't you get off the bus?". His assailant - the driver of the bus - continued to verbally abuse him (this time calling him a "Jewish bastard") and to hit him. Habib J., who had collapsed onto the floor of the bus, heard the driver inform the police by radio that he had been attacked by a passenger. Shortly afterwards two or three police officers arrived and spoke to the driver out of Habib J.'s earshot. The officers then pulled the Iranian student out of the bus, ignoring his protests that it was he who had been the victim of an assault, and threw him into a police van with such force that his head banged against the vehicle.

All this was witnessed by a woman who happened to be passing by the bus-stop at the time. She later confirmed that she had seen the driver go to the back of the bus where Habib J. had been sleeping, take his head in both hands and strike it against the window until the whole bus shook. The woman also witnessed the arrival of the police, expecting that everything would be sorted out. Instead she saw the police brutally take hold of Habib J. and "chuck him into the back of the van...like a piece of meat".

Habib J. alleges that after arriving at police station 33 in Perleberger Street, he was again racially abused by several officers, one of whom asked him why he did not go back to Israel. Habib J. explained that he was not Jewish but Iranian, a remark which prompted the officers to shout "Allah, Allah" and to make jokes about Islam. When he tried to make a formal complaint about the assault on him by the bus driver, Habib J. was merely handed a sheet of paper with a number on it, the significance of which he did not understand. Believing his complaint had still not been registered, he refused to leave the station, at which point he was hit twice in the face by an officer and was violently thrown out into the street. Medical examinations conducted on 24 and 25 December 1992 revealed that Habib J. had suffered impaired vision and bruising to the face.

Habib J., who was granted political asylum by the German authorities in 1988, made an official complaint about his ill-treatment by the police. A complaint was also brought against Habib J. by the police for resisting state authority at the police station.

In January 1994 four officers were charged with ill-treating Habib J. Two of the four faced additional charges of insulting him. In March 1994 the complaint against Habib J. of resisting state authority was dropped in accordance with section 153 of the German Code of

Criminal Procedure ("Non-prosecution in the case of minor offences"). Six months later three officers were convicted (subject to appeal) of causing Habib J. bodily harm and were fined sums of between DM 10,500-12,600 (approximately £4,500 to £5,500). One of the three officers was also found guilty (subject to appeal) of insulting Habib J. This is one of only relatively few cases known to Amnesty International where police officers have been charged and convicted of ill-treating a detainee in their custody.

1.2 The prohibition of torture and cruel, inhuman or degrading treatment or punishment

The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment is a fundamental norm of international law. It is recognized in Article 5 of the Universal Declaration of Human Rights and is enshrined in Article 7 of the International Covenant on Civil and Political Rights (ICCPR), in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)⁵. Germany is a party to all these international human rights treaties.

Acts of torture and cruel, inhuman or degrading treatment or punishment are also prohibited by German constitutional and criminal law. Article 1 (1) of the German Constitution or Basic Law states that: "The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority." According to Article 2 (2): "Everyone shall have the right to life and to inviolability of their person." For persons in official custody the protection afforded by Article 1 is clarified even further in section 104 (1) which states that: "Detained persons may not be subjected to mental or physical ill-treatment."

Although the German Criminal Code does not expressly prohibit torture and other cruel, inhuman or degrading treatment or punishment, such acts are made criminal offences under section 340 ("Bodily harm by public officials") of the Code. Section 340 states that:

"(1) Public officials who commit, or permit to be committed, bodily harm during the exercise of their duties or in connection with these, shall be punished by a period of imprisonment of between three months and five years. In less serious cases up to three years' imprisonment or a fine shall be imposed.

(2) If serious bodily harm (section 224) is committed, not less than two years' imprisonment shall be imposed and, in less serious cases, a term of imprisonment of between three months and five years."

The case of Muhammed A. (Cologne, North-Rhine/Westphalia)

⁵According to Article 1 of the Convention against Torture, the term torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

On 31 October 1994, just before midnight, Muhammed A. - a 20-year-old Roma from Kosovo province, Federal Republic of Yugoslavia, who has lived in Germany since 1988 - was stopped in Cologne by a police car while taking his dog for a walk. The officer asked him for proof of identity. As he had none on him - he had only gone for a short walk in his slippers - he offered to fetch his

papers from his girlfriend's house nearby. According to Muhammed A. the police officer ignored his suggestion and called for reinforcements. Two more police cars arrived and Muhammed A. was handcuffed. When he complained that the handcuffs were too tight, a policeman allegedly grabbed him by the hair and banged his head with full force against the police car breaking one of his front teeth. In the police car on the way to Weiden Police Station Muhammed A. asked why he was being arrested. One officer allegedly replied that if he did not shut up he would punch him in the face.

Muhammed A.'s girlfriend had witnessed his ill-treatment in the street and tried to intervene. However, police officers pushed her aside and told her to disappear. She then rang Martin R., a theology student and community worker who looks after Muhammed A. and his family, all of them asylum-seekers. Both of them then drove to Weiden Police Station. While he went inside she waited in the car outside.

According to Muhammed A., when he arrived at the police station he was pushed towards a room, causing him to collide with some doors. He pointed out his broken tooth saying that the police would have to pay for it and asked repeatedly why he was being held, stressing that he had done nothing wrong. He was told that if he did not shut up he would be detained all night. Eventually he was informed that his friend Martin R. had arrived and both men left the station after Muhammed A.'s identity had been confirmed.

Muhammed A. and Martin R. allege that as they were walking towards the car park where Muhammed's girlfriend was waiting, several officers suddenly came running after them shouting, "Now we've had enough". Martin R. put his arm around Muhammed A.'s shoulder but was grabbed from behind, lifted and then thrown to the ground by two police officers. According to Martin R. one officer knelt on top of him while he was lying on his back and knocked his glasses off. The officer shouted that he would smash his face in. When Muhammed A. asked the officer to let his friend go he was violently thrown against the boot of the police car.

Muhammed A. was taken back into the police station where he alleges that two officers pushed him into a cell, banging his head, shoulder and chest against

the metal doors in the process. When he shouted to be released a police officer came and punched him in the jaw. Martin R., who had also been taken back to the station, could hear officers shouting and the sound of something banging. He also heard Muhammed A. screaming with pain. Martin R. pointed out to the police that he was not going to accept such treatment and that a bus driver outside must have witnessed the events. The police went to check but said that the driver had not witnessed that "Muhammed A. had kicked a

car". (In one newspaper report a police officer was quoted as saying that Muhammed A. had gone mad at the station, had abused officers, and when he left the station had "kicked a parked car"). Muhammed A. and Martin R. were allowed to leave the police station after making a phone call to Martin R.'s father.

Later the same day Muhammed A. was examined by a doctor. Medical certificates confirm that he had suffered a broken tooth, an injury to the jaw and neck and a cut on his right hand. The Cologne Public Prosecutor launched an immediate investigation into the allegations of police ill-treatment. The police, who deny the allegations, brought a criminal complaint against Muhammed A. and against Martin R. for resisting police authority. In February 1995 the Cologne prosecuting authorities informed Muhammed A. that the investigation into police allegations that he had resisted arrest had been discontinued, in accordance with section 153 of the Code of Criminal Procedure ("Non-prosecution in the case of minor offences"). According to the Cologne Public Prosecutor an assessment of the available evidence had shown that Muhammed A. had resisted the authority of the police. However, as a result of the "rough treatment" he had been subjected to by police officers, the complaint against him was not being pursued. The investigation into police allegations that Martin R. had "attempted to free a prisoner from the custody of the police" was dropped for the same reasons. In March 1995 the investigation into the alleged ill-treatment of Muhammed A. and Martin R. was still continuing.

1.3 The extent of police abuse

The true number of officers who have used unwarranted or excessive force or who have deliberately ill-treated detainees in their custody, or who have witnessed or tolerated such acts without intervening, is known to no one. Many incidents of police violence go unrecorded because the victims do not complain. Indeed, numerous lawyers have told Amnesty International that they advise clients who have been ill-treated not to make an official complaint. This is because such a complaint has little chance of success (see section 3.1) and may result in a counter-complaint being brought against the victim (see section 3.5). Few official statistics on police ill-treatment exist, and those that do should be treated with caution.

1.4 Statistics on complaints of police ill-treatment

Statistical information on the number of complaints of ill-treatment made against police officers over a particular period of time is not readily available. Amnesty International sought such information from the Chairman of the Standing Conference of Ministers of Internal Affairs of the *Länder* in December 1994, but was informed that "neither the ministries of internal affairs of the *Länder* nor the Federal Ministry of Internal Affairs keep statistics on criminal proceedings or investigations regarding particular professional groups".

The annual crime figures supplied by some of the *Länder* police forces sometimes contain statistical information on investigations into criminal offences allegedly committed by "public officials". However, these are of limited use, since even if the offence of inflicting bodily harm (under section 340 of the Criminal Code) is isolated from all other offences, the category of "public officials" still remains too wide. (A person suspected of an offence under section 340 could be a police officer who has assaulted a

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person in his⁶ custody; equally it could be a teacher who has given a pupil a "box on the ears", illegal in German law.)

More meaningful statistics are sometimes supplied by the *Länder* ministries of internal affairs in answer to written questions about allegations of police ill-treatment submitted by members of the *Land* parliaments. However, these statistics are not compiled on a regular or systematic basis.

Amnesty International is aware of only one set of official figures for the whole of Germany. These were published in the German Government's response to the report of the European Committee for the Prevention of Torture, following its visit to Germany in December 1991.⁷

In its report, published together with the German Government's response in July 1993, the CPT had requested the German authorities to supply information on "the number of complaints of ill-treatment by police officers made in Germany during 1991 and 1992 and on the number of disciplinary/criminal proceedings initiated, with an indication of the sanctions imposed".⁸

The most important information supplied by the German Government in response to the CPT's request was as follows:

- seven *Länder* reported no complaints of ill-treatment by police officers in the years 1991 and 1992;
- one *Land* reported that over the two-year period charges of ill-treatment were brought against officers in ten separate cases;
- one *Land* reported "one criminal case against police officers in 1992";
- one *Land* reported two cases where "formal disciplinary proceedings plus criminal proceedings...resulted in convictions";
- one *Land* counted seven cases in which formal disciplinary proceedings were initiated and in which criminal investigations were also carried out;
- one *Land* reported criminal proceedings against a total of four police officers;
- one *Land* recorded a total of 48 cases where criminal proceedings were instigated against officers;
- one *Land* reported a total of 28 cases where criminal proceedings were instigated;
- one *Land* recorded 18 complaints, 16 of which resulted in criminal proceedings;
- one *Land* recorded for 1991 and 1992 a total of 1,173 cases in which criminal complaints of bodily harm (under section 340 of the German Criminal Code) were brought against police officers.⁹

Although not named in the report, it is clear from other sources that this last *Land* is Berlin.

⁶Amnesty International has received no allegations of ill-treatment by female police officers.

⁷The Committee for the Prevention of Torture (CPT) is a body of experts set up under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It organizes periodic visits to places of detention with a view to examining the treatment of detainees and, where necessary, to formulating recommendations in order to strengthen safeguards against torture and ill-treatment.

⁸CPT Report to the Government of the Federal Republic of Germany, page 15, paragraph 20.

⁹Response of the German Government to the report of the CPT, July 1993, pages 3-6.

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The above information is both incomplete and in some cases misleading. None of the *Länder* are named individually. The figures for two of them focus not on the number of complaints, but on the number of cases in which formal disciplinary proceedings were initiated following complaints. Yet the number of cases where police officers face formal disciplinary proceedings as a result of a complaint of ill-treatment tends to be very small (see section 4.2). And one *Land* supplies information only on the number of officers charged with ill-treatment - only a very small fraction of ill-treatment complaints actually results in officers being charged (see section 3.1) In the cases of these three *Länder*, the very small figures quoted may mask a much larger problem. This impression is confirmed by figures supplied by some of the *Länder* governments in written responses to questions raised in the *Land* parliaments. For example, in May 1993 the Hamburg Government confirmed that a total of 328 criminal investigations were opened into allegations of police ill-treatment in Hamburg in 1991 and 1992¹⁰, while according to the Minister of Internal Affairs of Hesse a total of 364 such investigations were opened by the authorities of that *Land* in 1992 and 1993¹¹.

In view of the statistical deficiencies highlighted above, Amnesty International urges the German authorities to maintain and publish regular, uniform and comprehensive figures on complaints about ill-treatment by officers of the individual *Länder* and federal¹² police authorities. These figures should include information on: the number of complaints of ill-treatment made against police officers over a specified period of time, the steps taken in response to each complaint and the outcome of any criminal and disciplinary investigations conducted into alleged police ill-treatment. Such information is essential in order to come to a conclusion about the nature of any measures that may be proposed to tackle ill-treatment. It is recommended that these figures be collected and compiled by a central agency in order to ensure consistency and comparability between the *Länder*.

1.5 The high incidence of complaints against Berlin police officers

Despite the serious limitations of the statistics supplied to the CPT, it is clear that Berlin police officers were responsible for a high proportion of the cases of alleged police ill-treatment recorded in Germany in the years 1991 and 1992. Nor were these two years in any way exceptional.

During the period 1980-88 an average of 500 criminal investigations each year were completed into allegations that West Berlin police officers had ill-treated detainees in their custody¹³, while information supplied by the Berlin Minister of Internal Affairs in December 1993¹⁴ in reply to a parliamentary question revealed that 481 such investigations were opened in 1990, 627 in 1991¹⁵, 646 in 1992 and 566 in the first 10 months of 1993. (It is not clear why the figures for 1991 and 1992 are higher than those supplied to the CPT and quoted above.)

Numerous factors are often put forward in order to explain why the number of cases of alleged police ill-treatment is so much higher in Berlin than in other cities or *Länder* in Germany. With a population of 3.5

¹⁰Hamburg Government reply to a written parliamentary question, Hamburg parliamentary paper number 14/4032, 18 May 1993.

¹¹Hesse parliamentary paper number 13/6541, 19 September 1994.

¹²Some police officers - for example the Federal Border Police - come under the control of the federal, rather than the *Land* authorities.

¹³See Strafverfahren gegen Polizeibeamte in der BRD ("Criminal proceedings against police officers in the FRG"), Manfred Brusten, Kriminologisches Journal, 4. Beiheft, 1992, page 99.

¹⁴Berlin parliamentary paper number 12/3640, 14 December 1993.

¹⁵The figures after 1990 refer to the police forces of both west and east Berlin which were amalgamated after German unification in October of that year.

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million Berlin is the largest city in Germany. (The next most populous city - Hamburg - is only half Berlin's size.) It is a city with a history of grassroots political activism, of demonstrations and house squatting. It is also a city which attracts large numbers of people looking to earn money, including asylum-seekers officially resident in the surrounding *Länder* or visitors from Germany's neighbouring countries to the East. Berlin also has a large number of non-governmental organizations, hundreds of lawyers and the highest number of police officers per head of population in Germany. The flow of information from an international city like Berlin is also likely to be much better than from a small provincial city or from a village in the German countryside.

Nevertheless, even after generous allowance is made for all these different factors, the number of cases of alleged police ill-treatment in Berlin appears disproportionately and worryingly high. Indeed the information which has reached Amnesty International over the last three years suggests a pattern of police ill-treatment in Berlin, rather than a problem of a few isolated incidents.

In August 1994 Amnesty International interviewed a number of Vietnamese, the majority of them asylum-seekers, who alleged that they had been the victims of assaults by Berlin police officers. Some of these cases are described below.

Case studies: the alleged ill-treatment of Vietnamese detainees (Berlin)

Victims L and T¹⁶ allege that in May 1994 they were followed and then chased by four plainclothes police officers in Pankow, east Berlin. The two men took refuge in a sewage canal where they stayed for what seemed like an eternity. When they emerged they were set upon by the officers who had hidden in wait. Victim L alleges that he was repeatedly punched in the face and dragged into the canal where one officer carried on hitting him with karate chops to the neck. More officers arrived, one of whom asked L where his cigarettes were.¹⁷ When he did not answer he was struck again and made to run up and down the canal, knee high in water, for approximately 20 minutes. After the officers left, L returned home. Both sides of his face hurt so much he could not eat. He did not think of complaining or of going to a doctor because he was "only" an asylum-seeker, did not have permission to be in Berlin¹⁸, and had been involved in the illicit sale of cigarettes. Victim T alleges that he was apprehended by the same group of officers, one of whom held a pistol against his stomach and searched him. While the officer was doing this he was interrupted by three or four passers-by who asked him what he was doing. The officer showed them some proof of identification and told them to go away. According to T the officer then kicked him in the thigh, knocking him to the ground. He then took hold of him by the scruff of the neck, took a look round to see that no one was watching and punched him hard on the chin, causing him to spit blood. The victim pleaded with the officer to stop. Another officer then took hold of him and threw him in the water. After all the officers had left, T returned home. He treated his injuries himself and did not leave his house for the next two months.

Victim N alleges that in May 1994 he had gone for a walk in east Berlin in an area where Vietnamese were selling cigarettes. Suddenly one Vietnamese man came up to him and

¹⁶None of the Vietnamese victims whose cases are described here wish their real names to be used.

¹⁷Many Vietnamese asylum-seekers are engaged in the illicit sale of cigarettes in Berlin.

¹⁸Asylum-seekers are assigned to a particular district in a particular Land and need written permission from the authorities before they can leave it.

said he should run. Because he feared an imminent racist attack and because he was in Berlin illegally, he started to walk, but not run, away. However, he was stopped by two plainclothes men who took him over to two uniformed police officers. One of the officers allegedly grabbed hold of him by the jacket and said, "Where are the cigarettes?". N answered that he did not have any, whereupon the officer threw him to the ground. The same officer then pulled him up and took him to a police van close by. There, he alleges, the

officer pushed him to the floor of the van and punched him hard in the ribs and in the stomach. He doubled up in pain, almost losing consciousness. During the assault on him another officer was seated at the front of the van filling out a form. N was then thrown out of the bus. Three passers by heard his cries for help and took him to a nearby swimming baths from where an ambulance was called. A medical certificate from the afternoon of the incident shows that N had suffered a broken rib. In September 1994 one officer was charged with causing bodily harm to N and a second officer with failing to prevent the assault on him.

Amnesty International described the case of another victim in its report Federal Republic of Germany: A summary of concerns in the period May - October 1994 (AI Index: EUR 23/08/94) published in November 1994. In this case the victim - referred to in the report as **Nguyen T.** (a fictitious name) was subjected to serious ill-treatment amounting to torture. Nguyen T. and his wife were stopped by police officers near Vineta Street underground station in the east Berlin district of Pankow in June 1994. Nguyen T. states that he had in his possession one carton of cigarettes. This he handed immediately to the officer, anticipating that that was the reason he had been stopped. Ignoring his action, however, one of the officers proceeded to punch Nguyen T. and to kick him repeatedly while he was on the ground. A second officer held the detainee's wife. According to Nguyen T. at one point the officer who had assaulted him dragged him into a courtyard at the back of a residential building so that he could continue to assault him without being seen by the people in neighbouring flats.

Alarmed by the sound of his screaming, some residents had in the meantime opened their windows and shouted at the two men, who were dressed in plain clothes, to stop. Another resident was so alarmed at what was happening that he called the police. Eventually Nguyen T. was put into a police car, face down on the back seat, with his hands handcuffed behind his back. Two officers sat on his back, making it difficult for him to breathe; one of the officers also allegedly continued to hit him during the journey to a nearby police station. Nguyen T. states that after arriving at the police station he was hit again. At one stage he felt so unwell that he had to vomit. Before he was allowed to leave the police station and rejoin his wife who had been left behind at the scene of his arrest, Nguyen T. was allegedly made to sign a piece of paper admitting that the police had found large numbers of cigarette cartons on him. He was given to understand that if he did not sign he would be subjected to further ill-treatment.

A medical examination conducted the day after his alleged ill-treatment showed that Nguyen T. had multiple bruising to his body and a hairline fracture

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of the bone under his left eye. Such injuries were consistent with the blows he said he received. When interviewed by Amnesty International in August 1994, Nguyen T. was still experiencing a sharp pain in his head, impaired vision and dizzy spells.

Amnesty International also received allegations in the summer of 1994 that Vietnamese detainees had been ill-treated by police officers in Bernau, a town approximately 25 kilometres north-east of Berlin in the *Land of Brandenburg*. The organization spoke to one of them in August 1994.

The case of Vietnamese victim H (Brandenburg)

Victim H was arrested by uniformed police officers in Bernau in June 1994. He was placed in a police car and driven to a nearby station. During the journey a police officer allegedly punched him in the stomach and repeatedly and violently pinched his thigh, causing him to cry out in pain. After arriving at the police station the victim was ordered to undress, without being told why. Two officers then reportedly subjected him to a barrage of kicks and punches to his shins, body and face. One officer in particular - the one who had hit him in the car - was responsible for most of the ill-treatment. This same officer then searched his clothes. In the detainee's pocket he found a stick of lip cream with which he painted the victim's face. The victim states that this made him feel "like an animal". After his nose had started to bleed from one of the blows to his face, the assault on him ended and he was told to get dressed. Before being literally kicked out of the station he was made to sign a piece of paper. He did not know exactly what it was, but did not care - he just wanted to get away. Despite the fact that he was not officially allowed to visit a doctor in Berlin because he was not registered there, H nevertheless sought medical assistance because he felt so unwell. A doctor's certificate from the same day shows that he had bruises to the head, chest and lower leg. These injuries are consistent with his alleged ill-treatment.

Other Vietnamese victims alleged that at the police station they were taken to in Bernau they were told to undress, made to pull stupid faces and photographed.

Amnesty International has spoken to a number of other Vietnamese victims of police ill-treatment in Berlin and Brandenburg. The organization has also seen a number of written statements taken from victims by the Berlin-based non-governmental organization Reistrommel. Many of the allegations made by the victims are similar to those described above, although distinctive in their individual detail. Amnesty International believes that the consistency and general credibility of these reports point to a serious pattern of ill-treatment of Vietnamese detainees by Berlin and, to a lesser extent, Brandenburg police officers, over a period of more than a year.

Amnesty International has raised its concerns regarding the ill-treatment of Vietnamese detainees with the Berlin and Brandenburg authorities. In January 1995 the organization learned that in Berlin a total of 55 investigations had been opened into allegations that Berlin police officers had assaulted Vietnamese detainees in their custody. A number of these investigations had already been closed through lack of evidence. In two cases officers had been charged, and in one of these a court had acquitted the officers concerned. A number of investigations had also been opened into allegations that Vietnamese detainees

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had resisted state authority or had made false accusations against officers.

In December 1994 Amnesty International was informed by the Prime Minister of Brandenburg that seven police officials from Bernau police station were under investigation for the alleged ill-treatment of Vietnamese detainees. In March 1995 it was reported that eight Brandenburg police officers had been charged with ill-treating one Polish and numerous Vietnamese detainees in separate incidents over the period February 1993 to June 1994.

2 The rights of detainees in police custody

In numerous cases reported to Amnesty International the victims of alleged ill-treatment have reported that they were taken into custody without being informed of the reason for their arrest, and that while in detention they were refused permission to contact anyone. Many victims have also alleged that their attempts to submit a complaint about the ill-treatment they suffered were ignored, and that officers denied them medical assistance.

All of these are fundamental rights recognized in international human rights treaties to which Germany is a party and in other human rights instruments. They are also important safeguards to prevent ill-treatment from occurring in detention.

2.1 The right to be informed of the reason for arrest or detention

The right to be informed of the reason for detention is a fundamental principle recognized in international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) - Article 9 (2), and the European Convention for the Protection of Human Rights and Fundamental Freedoms - Article 5 (2). Both the latter and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 14) stress that the detainee must be informed of the reasons for his¹⁹ arrest "promptly, in a language which he understands".

Both sections 127 ("Provisional arrest") and 163 b (1) ("Establishing of identity") of the German Code of Criminal Procedure require that an arrested person be informed of the reason for his arrest.²⁰ According to section 127 a police officer may arrest a person caught in the act of committing a criminal offence or caught immediately afterwards, where there is a danger of the person fleeing, or where any delay by the officer (as a result, for example, of going through the appropriate channels to obtain an arrest warrant) could jeopardise the arrest. Section 163 b (1) sanctions the detention of someone suspected of committing a criminal act if "their identity cannot otherwise be ascertained or can only be ascertained with considerable difficulty". Under this section the person concerned could also be held in order to be photographed and fingerprinted.

Länder legislation on the police also requires that a person detained for purposes of identification or whose detention is necessary in order to prevent him from committing or from continuing to engage in a criminal offence "must be told immediately of the reason for his arrest".²¹

¹⁹In all the cases brought to Amnesty International's attention the victims of alleged ill-treatment have been male.

²⁰See *Strafprozeßordnung* - a commentary on the German Code of Criminal Procedure by Dr T Kleinknecht, K Meyer, and Dr L Meyer-Goßner, 41st Edition, Munich 1993, § 127, note 12 and § 163 b, note 3.

²¹Section 32 (1) of the Berlin General Law on Security and Order and section 39 (1) of the Law on Public Security and Order of Sachsen-Anhalt. (There are also separate legal and constitutional provisions covering the rights of persons who have been arrested after the issuing of a formal arrest warrant (Article 104 (3) of the Basic Law), and the rights of persons who have been provisionally arrested and who are then brought before a judge prior to being either formally arrested or released (sections 114 and 114 a of the German Code of Criminal Procedure). However, these provisions are less relevant here, as in none of the cases of ill-treatment reported to Amnesty International did the victims fall into either of these two categories.)

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Many victims of alleged ill-treatment whose cases Amnesty International has taken up have reported that they were not informed of the reason for their arrest, either at the moment of arrest or after being taken to a place of detention, usually a police station.

The case of Yusef Barzan (Magdeburg, Saxony-Anhalt)

Yusef Barzan, a Kurd, fled from Iraq in late 1992. In August 1991 he had lost fingers from both hands when a bomb he was trying to defuse went off. Previous to that he had spent 10 months in an Iraqi prison where he was badly tortured.

He has applied for asylum in Germany and has been treated at the Berlin-based Centre for the Victims of Torture.

On 12 May 1994 Yusef Barzan was attacked in the centre of Magdeburg by a group of youths wielding baseball bats. They chased him through the streets chanting "Germany for the Germans, foreigners out". In the words of Yusef Barzan: "Suddenly I saw two police cars arrive and three officers get out. I thought, thank God, I'll be OK now". He was wrong. Instead of offering him assistance, one of the officers allegedly threw him to the ground, struck him on his shoulder with his baton and kicked him in the testicles. When he protested he was told, "Shut your mouth, you bastard". Yusef Barzan alleges that he was then thrown into a police car where he was beaten again. After being taken to a nearby police station he was made to undress, without being told why. Nor was he told at any stage, he alleges, of the reason for his arrest or detention. After a few hours he was transferred to another station where he spent the night in a cell with about 15 other foreigners. Reportedly there were no beds in the cell. Before being allowed to leave the station at approximately 5am the next day he was made to sign a piece of paper, the significance of which he did not understand as his German was not good enough. When he asked what it was about he was told: "It's to do with your problem".

Yusef Barzan states that he did not consult a doctor immediately after his release because he had "only" suffered bruising. Nor did he make an official complaint about his ill-treatment and detention because he was afraid he would not be able to pay the legal fees involved. Following a report about his experiences in a news magazine, Yusef Barzan was interviewed by police officers about his alleged ill-treatment at the end of May 1994. In September 1994 a police officer was charged with causing bodily harm to Yusef Barzan. No date had been fixed for the officer's trial by the middle of March 1995.

Amnesty International urges the German authorities to ensure that the right of detainees to be promptly informed in a language they understand of the reason for their arrest or detention is respected.

Some victims of alleged police ill-treatment in Berlin have told Amnesty International that they were not even sure that the people who arrested them were law enforcement officials because they behaved so aggressively, were dressed in plain clothes, and made no attempt to identify themselves as police officers. Yet the service instructions of Berlin police officers clearly state that:

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"Officers should, if possible, introduce themselves to the person concerned...and state the reason for their intervention...Uniformed officers should carry an identity card and show this if there is a reasonable request for them to do so. A plainclothes officer must show his badge and/or identity card without being asked...Officers are obliged to hand out a service card without hesitation and without being asked, if the situation allows this without creating considerable difficulties...This [applies also] to special police operations."²²

The requirement for even uniformed police officers to carry a form of personal identification is particularly important in Germany because they do not generally carry any visible personal identification on their clothes. Thus the only way in which the victim or a witness of ill-treatment can learn the identity of the offending officer is to ask him. It is perhaps not surprising that in such circumstances officers do not always comply with such a request.

A witness's account of police ill-treatment (Berlin)

On 19 July 1994 Edeltraud and Günter Wochnik were sitting outside a Turkish restaurant, enjoying a meal. At approximately 6pm the couple saw three police vehicles stop outside a house. Several uniformed officers got out. About 10 minutes later the couple observed the officers brutally push a young man, southern European in appearance, into one of the vehicles and then hit him several times on the upper body or face.

The couple wrote a letter to the Berlin police describing what they had seen. In it they stated:

"It is absolutely incomprehensible to us that someone who has already been arrested and is offering no resistance can be unnecessarily hit in front of six police officers."

Several times Edeltraud and Günter Wochnik asked the officers for their service numbers. These the officers refused to give. One of them even allegedly commented "The next time we'll come later". The ill-treatment of the detainee, whose identity is not known, was also witnessed by a Frenchwoman dining at the restaurant. She also wrote to the Berlin police authorities from her home in

²²Section 3.3.6 of the Berlin Decree on the Introduction of Police Service Regulation 350.
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Paris, including in her letter the registration numbers of two of the police vehicles involved. Four weeks after Edeltraud and Günter Wochnik had written to the authorities they were questioned by the police about what they had witnessed. By the middle of March 1995 they had still not been informed about the outcome of their complaint.

In January 1994 the uniformed branch of the Hesse police force started wearing their names on their uniforms. The idea had been criticized by many sections of the German police, on the grounds that officers could find themselves the victims of targeted attacks. In fact, early reports²³ suggested that the Hesse experiment was well received by both officers and members of the public.

Amnesty International urges the German police authorities to ensure that officers adhere to their service instructions which require them to clearly identify themselves to members of the public when carrying out their duties, unless there are concrete and justifiable reasons for them not to do so. The organization also recommends that the federal and *Länder* police authorities examine seriously whether all uniformed officers should be required to wear some form of personal identification on their uniforms - for example their service number or, as in Hesse, their name.

2.2 The right to a medical examination in police custody

The CPT recorded in its report to the German Government following its visit to Germany in December 1991, that:

"The delegation was informed by officers at the police stations and GESAs²⁴ visited that doctors were called in when prisoners requested them. In addition, in accordance with the relevant instructions issued by the *Länder*...any prisoner who appeared to require assistance or whose state of health was in doubt, was systematically seen by a doctor. Recourse was had to emergency services doctors, private practitioners operating stand-by services at the place of detention itself or police doctors."

Although the CPT heard no complaints about medical assistance (or indeed about ill-treatment) during its visit in December 1991, many detainees who have reported ill-treatment to Amnesty International during the last three years have alleged that their requests for medical assistance at their place of detention have been ignored.

The case of Bora A. (Berlin)

In the early afternoon of 28 March 1993, Bora A., a Turk married to a German national, was talking with friends outside a café in the Wedding district of Berlin. A police car drew up near the café and two officers got out. They approached Bora A. and asked him for his identity papers, his driving-licence and his car papers. Bora A. asked the officers why they needed to check his identity and then went over to his car to fetch the information. A friend with whom he had been talking asked the officers what Bora A. had done, at which point

²³See Der Spiegel, 5/94, page 35.

²⁴GESA = Gefängensammelstelle or Police Detention Centre.
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one of the two officers ran over to the police car and called for assistance. Within a few minutes four or five other police vehicles had arrived on the scene. Bora A. alleges that one of the newly arrived officers went over to him and without saying anything thrust his left arm up behind his back. When he bent his head forwards to alleviate the pain to his arm, he was kneed several times in the stomach. This action was followed by a number of karate chops to the back of Bora A.'s neck. Bora A. was then pushed inside a police car with his wrists handcuffed tightly behind his back and taken to a detention building attached to police station 16 where he was placed in a cell.

Bora A. alleges that during his detention he was in considerable pain and started to experience breathing difficulties. His call for a doctor was answered after an interval of 10 minutes by two officers who came into his cell laughing. One of the officers allegedly told Bora A. that he could see a doctor if he had DM 3,000 (approximately £1,300). The detainee was then taken into an office where the handcuffs were removed from his visibly swollen wrists. He was searched and his fingerprints and photograph were taken.

Bora A. further alleges that while he was detained he was racially abused and was refused permission to telephone his wife. He states that after it had been ascertained that he had no previous convictions of any kind, officers discussed with each other what they could put down on the charge sheet. A criminal complaint was later brought against Bora A. for resisting state authority and for assaulting officers.

After refusing to sign a piece of paper that had been placed in front of him, Bora A. told the officers that he was going to make a formal complaint. He alleges that upon hearing this, one of them replied, "Go on then, we're all

colleagues here". Bora A. was then allowed to leave the detention building. Once outside he ascertained that not all of his personal belongings had been returned to him. He went to the main entrance of the police station in order to make a complaint but was not allowed in. After returning home Bora A. went with his wife to hospital where he was examined and X-rayed. Afterwards he went to his local police station and made a complaint. A medical certificate issued by his local doctor the next day reveals that Bora A. had suffered multiple bruising. As a result of injuries to his neck he was required to wear a neck support for five days.

In September 1993 the Berlin prosecuting authorities dropped the investigation into the alleged ill-treatment of Bora A., concluding that although the officers involved had used force against Bora A., they had done so in self-defence after the complainant had attacked them while they were arresting a friend of his. The prosecuting authorities based their ruling largely on the evidence of five police officers, whose testimony "could not be disproved". The charges against Bora A. for resisting state authority were not pursued.

According to Article 6 of the United Nations Code of Conduct for Law Enforcement Officials police officers are to: "Ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required." Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners and Principle 24 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment impose a similar requirement.

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Amnesty International urges the German authorities to ensure that any detainee requesting medical assistance at a place of detention is provided with the services of a doctor immediately.

2.3 The right to contact a relative or other person

Like Bora A. many victims of alleged police ill-treatment have told Amnesty International that after being taken to a police station their requests to telephone their partner, wife or employer were ignored. This again is in direct contravention of international human rights instruments. Rule 92 of the United Nations Standard Minimum Rules for the Treatment of Prisoners states that:

"An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution".

Principle 16 (1) of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment has a similar requirement. In the case of foreign nationals, Article 16 (2) further stipulates that the detained person should also be informed of his right "to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national...". According to the German Code of Criminal Procedure²⁵ a person detained for the purposes of establishing his identity has the right to inform immediately a relative or a person "of trust" of his detention, unless he is suspected of having committed an offence and his use of this right would endanger the purpose of his detention, in which case the police themselves are to inform the chosen person.²⁶

Amnesty International urges the German authorities to ensure that the right of detainees, guaranteed both in international human rights instruments and in German law, to inform a relative or person of their own choice of their detention is respected.

2.4 The right to complain

In many cases brought to the attention of Amnesty International, detainees who have suffered ill-treatment allege that when they or, as in the case described below someone with them, have attempted to file an immediate official complaint their requests have met with indifference or hostility.

²⁵Section 163 c (2)

²⁶The Berlin General Law on Security and Order (section 32 (2)) accords the same right to anyone detained for the purposes of establishing his identity or whose detention is necessary in order to prevent him from committing or from continuing to engage in a criminal offence.

The case of Ali-Abdulla and Taha Iraki (Berlin)

Ali-Abdulla and Taha Iraki are German citizens of Lebanese origin. According to a complaint they have made to the Berlin prosecuting authorities, at about 10pm on 4 June 1994 Taha Iraki had stopped his car in the Kreuzberg district of Berlin. Because the door of the car had jammed, his brother, Ali-Abdulla Iraki, tried to pull it open from the outside while Taha Iraki pushed against it. When their attempts failed Taha Iraki leaned back inside the car and kicked the door with his foot, accidentally causing the car window to shatter. Two police officers, who had observed the incident from a police van parked nearby, immediately ran to the scene and reportedly began to beat Ali-Abdulla Iraki with their batons. They then grabbed him from behind, twisted his right hand, and threw him with such force against another car parked in the street that the door was dented. Three more police officers appeared, dragged Taha Iraki by the hair from his car onto the ground and began beating him with their batons. Ali-Abdulla Iraki states that when he tried to protest about his brother's ill-treatment, he was handcuffed and beaten. The police officers also handcuffed Taha Iraki, continuing to hit him as he lay helpless on the ground. He was then dragged along the ground into the nearby police vehicle. Both brothers allege they were also ill-treated inside the vehicle before being taken to police station 53.

On the way to the police station the brothers were asked for their identity papers. The police officers reportedly made no attempt to give any explanation for their arrest or to establish who owned the car with the broken window. At the police station the two brothers were locked in separate cells. When Ali-Abdulla Iraki asked what was happening, he was told by two plainclothes officers "We'll fix you our way". Half an hour later the brothers were released without any explanation and went directly to the first-aid department of their local hospital for treatment to their injuries. According to medical reports Ali-Abdulla Iraki's right arm and wrist were put in plaster because of a fracture to his wrist. He had also suffered bruises and abrasions. Taha Iraki had suffered abrasions and cuts to his left shoulder, bruises to his back and grazes to his left elbow.

Ali-Abdulla Iraki's wife, Clara, who happened to be in the café owned by Taha Iraki on the same street, witnessed the beating and arrest of the two brothers. She tried to explain to the police officers that the car belonged to Taha Iraki but they ignored her. When she protested about the ill-treatment, one of the officers commented that his colleague must have suffered a "blackout". She also heard the same colleague verbally abuse Taha Iraki as he lay on the ground, calling him a "Turkish bastard". Clara Iraki followed her husband and his brother to the police station where she made it clear that she wished to make a

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formal complaint about the way in which Ali-Abdulla and Taha Iraki had been treated. She was told that she would have to wait. Half an hour later she asked again but was told that it was not possible. When the two men were finally released she asked whether her complaint had been noted down. The response she was given was "go home".

Article 13 of the Convention against Torture requires each State Party to ensure that:

"Any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities."

Article 16 of that treaty makes clear that this obligation extends to complaints of cruel, inhuman or degrading treatment or punishment. Article 7 of the ICCPR imposes a similar obligation, while Principle 33 (1) of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that:

"A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities..."

Section 158 of the German Code of Criminal Procedure stipulates that criminal complaints can be made orally or in writing "to the prosecuting authorities, the agencies and officials of the police and to the local courts". It is not only the responsibility of the police to receive complaints, including complaints of ill-treatment, it is also their duty.²⁷

Amnesty International urges the German authorities to ensure that the right of detainees, guaranteed both in treaties to which Germany is a party and in international human rights instruments as well as in German law, to make a complaint about their treatment in detention is respected.

2.5 The right to be informed about one's rights

The rights of detainees under German law is a complex area. For this reason it is essential that detainees are provided immediately after their arrest with clear information regarding these rights. This is even more important in the case of foreign nationals or members of ethnic minorities, since their ability or confidence in the German language may be low, and they may be even less familiar with the German legal system than native Germans. In addition, any person who has been suddenly arrested, taken to a police station, perhaps for the first time in his life, and who may, furthermore, have suffered physical ill-treatment, is already likely to be feeling disorientated, helpless and confused. Yet many victims of alleged ill-treatment have reported to Amnesty International that instead of having their rights explained to them, they have been kept in a state of ignorance, unsure how long they will be detained for and in some cases told to sign pieces of paper, the significance of which was not made clear to them.

²⁷See *Strafprozeßordnung* - a commentary on the German Code of Criminal Procedure by Dr T Kleinknecht, K Meyer, and Dr L Meyer-Goßner, 41st Edition, Munich 1993, § 158, note 8.
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The case of Mohammed (Berlin)

At approximately 4pm on 5 December 1992 Mohammed²⁸ was jumped upon from behind by a man wearing plain clothes near the Kaiser-Wilhelm Memorial Church in the Charlottenburg district of Berlin. The Sri Lankan Tamil, who was granted refugee status in Germany in 1990, alleges that he was beaten and called a "bloody wog". He was then taken to a police station where it was claimed by officers that he had stolen a bag, an allegation he denied. Mohammed alleges that before leaving the station he was told to sign a piece of paper. This he refused to do, at which point, according to Mohammed:

"[The officer] said that if I wanted to go home I would have to sign...I asked 'What does it say? I can read German well enough to understand'. The officer said 'sign' and prevented me from reading the text. I then wrote in Tamil, my mother tongue, 'I've stolen nothing, it's all a lie'. They took that for my signature, but I didn't sign anything. After that they took my fingerprints and photographed me. Then they opened the door and said 'Get lost, wog!'"

²⁸The victim has requested that this fictitious name, rather than his real one, be used by Amnesty International, as he was subjected to racist abuse and threats following media coverage given to his case.

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Two days later Mohammed's family doctor diagnosed a sprained shoulder, bruising to the muscles of the shoulder, bruised buttocks and strained and scratched wrists. The officers involved denied ill-treating Mohammed.

An investigation was opened into Mohammed's allegations. In September 1993 the Berlin prosecuting authorities rejected Mohammed's complaint, concluding that:

"The nature and extent of the injuries which were diagnosed do not indicate an amount of physical harm beyond that which was necessary in order to carry out the arrest and apply the handcuffs..."

Charges were brought against Mohammed for attempted theft. These were later dropped, however, in accordance with section 153 of the Code of Criminal Procedure ("Non-prosecution in the case of minor offences").

The right for a detainee to be informed of his rights is laid down in Principle 14 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which states that:

"Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights."

Principle 14 further states that where a person "does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment" he should be provided with the information referred to above "in a language which he understands". In its report on the Federal Republic of Germany the CPT recommended that:

"A form setting out the detainee's rights be given systematically to such persons at the outset of their custody. The form should be available in different languages. The person concerned should also certify that he has been informed of his rights."²⁹

The German Government rejected this important recommendation, commenting that:

"No practical need is seen at present for such a form. It must be especially taken into account that persons detained by the police are often hardly able to read and understand such forms because of their condition (for instance due to drunkenness). With regard to forms being made available in different languages, there are problems with regard to correct translations, the large number of languages into which the form would have to be translated, and the fact that some detainees are illiterate."³⁰

Amnesty International believes that the German Government should re-examine urgently its

²⁹CPT Report to the Government of the Federal Republic of Germany, page 20, paragraph 39. The CPT attached particular importance to the right of the detainee to inform a close relative or person of his choice of his detention, the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice.

³⁰Response of the German Government to the report of the CPT, July 1993, pages 9-10.

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response to this recommendation. In doing so it would be fulfilling its obligations under Article 11 of the Convention against Torture which requires States Parties to:

"Keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."

Amnesty International further recommends that a clear and comprehensive record be kept of the period which any detainee spends in custody. This record should include details of: the time and reason for detention; any signs of injury exhibited by the detainee; requests by the detainee for medical assistance and the action taken in response to such requests; requests by the detainee to contact a relative or other person of his choice, including a lawyer, and the action taken in response to such requests; any complaints made by the detainee about his treatment, and the action taken in response to these complaints; when the detainee was informed about his rights while in detention. The lawyer of the detainee should have full access to such a custody record.

3 The investigation and prosecution of allegations of police ill-treatment

3.1 Lodging a complaint

Article 12 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that States Parties to the Convention conduct a "prompt and impartial investigation" into allegations of torture or ill-treatment.

In Germany it is the role, and indeed duty, of the public prosecutor to investigate all information brought to his or her attention which indicates that a criminal offence may have been committed. Such information would include an allegation that a police officer had ill-treated a detainee in his custody. After the prosecuting authorities have completed their investigation, they must decide whether to press criminal charges.³¹ Criminal charges can only be brought if there are "adequate grounds" for doing so.³² "Adequate grounds" exist if the suspected person, in this case the police officer, is "sufficiently suspected of having committed a criminal act"³³, meaning that the balance of probability must be that a court would convict the officer if he were charged and tried for the offence in question. If the complaint is rejected, the complainant can appeal to the public prosecutor's superior.³⁴ If this appeal is rejected, the complainant can apply for a judicial review of the prosecuting authorities' decision not to bring charges.³⁵

Amnesty International believes that although Germany has created a structure to investigate allegations of torture and ill-treatment, this is not working as thoroughly as it should do. It has not, therefore, been effective in preventing the use of torture or ill-treatment.

The experience of many lawyers, victims and non-governmental organizations Amnesty International has spoken to is that a well-founded complaint against a police officer will seldom lead to a conviction, or even to charges being brought against the officer concerned. The few statistics that are available lend

31Sections 152 and 160 (1) of the German Code of Criminal Procedure

32Section 170 (1) of the German Code of Criminal Procedure

33Section 203 of the German Code of Criminal Procedure

34Section 172 (1) of the German Code of Criminal Procedure

35Section 172 (2)-(4) of the German Code of Criminal Procedure

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support to this view:

- Out of 646 complaints of police ill-treatment made in Berlin in 1992, 572 had been rejected by the middle of the following year. In 19 cases officers were charged and tried. All were acquitted.³⁶
- In Hamburg 387 investigations were launched into alleged criminal behaviour by police officers in 1992 (171 of these 387 investigations were examining allegations that police officers had ill-treated detainees in their custody). In the same year a total of eight officers were charged with criminal offences.³⁷
- Police officers were the subject of a total of 552 criminal investigations in Hesse in 1992 and 1993 (364 of these investigations were into allegations of ill-treatment). By September 1994, 333 of the 552 investigations had been completed: in 318 cases the complaints against the officers were rejected, in 15 cases the officers concerned were charged.³⁸

Amnesty International believes that the practice of investigating complaints of police ill-treatment must be improved if the right of a complainant to legal redress is to be effective. In particular the organization is concerned that investigations are not always carried out promptly, impartially and thoroughly. The main problems which Amnesty International has identified are:

- Investigations into alleged police ill-treatment take too long to conclude.

By the middle of March 1995 criminal investigations were known to have been completed in 10 of the cases of alleged ill-treatment described in this paper. The average duration of each investigation was over 9 months. (This figure does not include the additional length of time which victims had to wait while their appeal against the public prosecutor's decision to reject their complaints was considered.) In one case - that of Mimoun T. (see page 46) - the investigation into his complaint of alleged police ill-treatment had still not been completed more than two and a half years after his allegations were made public. Amnesty International regards periods of 9 months and longer for such investigations as excessive.

- The prosecuting authorities do not exercise sufficient control over police investigations into alleged police ill-treatment.
- In assessing the evidence of a particular case the prosecuting authorities invariably view the testimony presented in favour of the suspected police officer as more credible than that supporting the victim's allegations.

These last two areas of concern are dealt with in detail in the next two sections of this paper.

3.2 The role of the police in investigating allegations of police ill-treatment

According to criminal procedure the role of investigating criminal complaints is firmly in the hands of the public prosecutor. Public prosecutors may call upon the "agencies and officials of the police" to assist

³⁶Figure quoted in Der Tagesspiegel, 21 July 1994.

³⁷Hamburg Government reply to a written parliamentary question, Hamburg parliamentary paper number 14/4032, 18 May 1993.

³⁸Hesse parliamentary paper number 13/6541, 19 September 1994.

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them in their investigations.³⁹ In fulfilling this role as "auxiliary officers" the police are required to obey the orders and instructions of the public prosecutor.⁴⁰

Invariably, however, it will be the police who receive the earliest indications that a criminal act has been committed. In such cases they are to take immediate investigative action and to "hand over to the prosecuting authorities without delay all evidence collected by them".⁴¹ In "difficult cases the police must consult with the prosecuting authorities from the very outset".⁴²

That these principles of criminal procedure also apply to investigations into alleged police ill-treatment was confirmed by the Berlin Minister of Internal Affairs in October 1993, in answer to a parliamentary question about the alleged ill-treatment of foreigners by Berlin police officers:

"The Berlin Police has always rigorously followed up all cases where police officers have been suspected of actions hostile to foreigners. It has opened the necessary investigations in these cases and has passed on the results of these to the prosecuting authorities where there is a suspicion that a criminal act has been committed."⁴³

Similarly, Amnesty International was informed by a senior Hamburg police officer⁴⁴ that reports of police abuses would normally be investigated by a special unit of police officers⁴⁵ "on its own initiative". "Urgent cases" would be passed immediately to the prosecuting authorities. In March 1995, however, it was reported that senior Hamburg police officers had not only failed to pass on serious allegations of police abuses to the prosecuting authorities, they even omitted to inform the special unit responsible for investigating police crime.

Case study: the alleged ill-treatment of African detainees (Hamburg)

Allegations that Hamburg police officers had ill-treated foreigners in their custody surfaced in September 1994 when it was revealed in the Hamburg press that two off-duty police officers had been fined following an incident in which they had assaulted a Senegalese man, **Dialle D.**, because he had worn a cap bearing the inscription "Give the Nazis no chance". Although the assault by the officers had occurred in January 1994 it had not become public knowledge because the prosecuting authorities had taken the unusual step of issuing the officers with a penal order rather than formally charging them in accordance with section 170 (2) of the German Code of Criminal Procedure.⁴⁶

³⁹Section 161 of the German Code of Criminal Procedure

⁴⁰Section 152 (1) of the Organization of the Courts Act

⁴¹Section 163 of the German Code of Criminal Procedure

⁴²See *Strafprozeßordnung* - a commentary on the German Code of Criminal Procedure by Dr T Kleinknecht, K Meyer, and Dr L Meyer-Goßner, 41st Edition, Munich 1993, § 163, note 4.

⁴³Answer given by the Berlin Minister of Internal Affairs to Parliamentary Question 18, 54th Session of the Berlin Parliament, 21 October 1993.

⁴⁴During a visit by a representative of Amnesty International to the Hamburg Ministry of Internal Affairs in January 1995.

⁴⁵Berlin also has a special police unit responsible for investigating alleged criminal offences by police officers.

⁴⁶Section 407 of the Code of Criminal Procedure states that the prosecuting authorities can apply to a judge for a penal order to be issued if "the results of [their] investigations suggest that court proceedings are not necessary". Although issuing someone with a penal order technically amounts to bringing criminal charges against them, it has the important difference that the accused does not have to stand trial. A penal order can only be issued in the case of minor offences. The maximum penalty possible is a one year's suspended prison sentence.

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In September 1994 in an unexpected development the Hamburg Minister of Internal Affairs announced that he was resigning from his post. In his resig-

nation statement the Minister said that: "Apparently the police and judicial authorities who were responsible for the case [of Dialle D.] made a wrong assessment of [its] importance and did not take sufficiently into account the possible racial motivation of the convicted officers". Without going into detail the Minister also stated that "although the Hamburg police is not hostile to foreigners, the extent of abuses towards foreigners has assumed proportions I did not believe possible". The day after his statement 27 Hamburg police officers were suspended from their duties. (The officers were reinstated 15 days later.)

More details about the abuses referred to by the Minister in his resignation statement were given in November 1994 in a press statement issued by the Hamburg Justice Ministry. According to the statement, investigations were being conducted by the Hamburg authorities into a number of allegations that police officers had inflicted bodily harm on people in their custody, had falsely imprisoned people and had ill-treated black Africans in detention.

In March 1995 further information was revealed in a television documentary⁴⁷ about the evidence which one key witness - a Hamburg police officer of 17 years service, the last two at station 11 in Hamburg - had given to the prosecuting authorities in connection with their investigations into police abuses. In his testimony the witness alleged that he had seen a fellow police officer make six black African detainees undress, before placing them in a cell. The officer then emptied the contents of a canister of tear gas into the cell and quickly closed the door. In a second incident the witness reported seeing an officer spray a naked detainee with disinfectant. The programme quoted the manufacturer's warning that the spray could cause serious injury to the skin. The witness also reported hearing other officers boast about how they had subjected an African detainee to a mock execution in the Hamburg harbour area. Reportedly the officers had made the detainee undress and while one of them had held his service revolver against the man's head a colleague fired a shot from his weapon into the air. The officers had allegedly said that the victim had "almost pissed and shit himself" with fear.

Senior police officers (including the head of the Hamburg police) were reportedly told about the alleged police abuses in April 1994, after the witness in question spoke to an officer during a training course. However, it was alleged that the officers in question did not pass the allegations on to the prosecuting authorities or even to the special police unit which investigates police crime in Hamburg, but instead carried out their own inquiries, concluding that the allegations were not concrete enough to warrant the instigation of criminal or disciplinary proceedings.

On 7 March it was reported that the head of the Hamburg police and another senior officer had been removed from their posts. A day later the Hamburg Senior Public Prosecutor informed a parliamentary committee investigating police abuses in Hamburg that 10 officers were being investigated on suspicion of assaulting detainees and a further 11 for being accessories after the fact.

In order to ensure that investigations into alleged police ill-treatment are carried out impartially, Amnesty International believes that the police practice of investigating allegations of police ill-treatment "on their own initiative" and of only passing "urgent cases" to the prosecuting

⁴⁷Panorama, ARD Television, 2 March 1995.

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authorities immediately (as in the case of Hamburg), or of handing cases over to the prosecuting authorities only after their own investigations have revealed "a suspicion that a criminal act has been committed" (as in the case of Berlin) should be abandoned. Instead all reports or allegations of ill-treatment by federal or *Länder* police officers should, as a matter of course, be passed immediately to the prosecuting authorities so that they can direct and control the ensuing investigations from the earliest possible moment.

In many cases, of course, the prosecuting authorities will receive allegations of police ill-treatment directly from victims, most commonly in the form a criminal complaint. If the complaint has "sufficient factual basis"⁴⁸, the prosecuting authorities will open an investigation and will call upon the services of the police - often the special police unit responsible for investigating police crime - to assist them in collecting evidence.

In their role as the "investigative organ"⁴⁹ of the prosecuting authorities police officers sometimes interview the complainant, that is, the victim of the alleged ill-treatment. Such interviews would clearly need to be conducted with great care, because many victims might feel intimidated at the prospect of being questioned about their complaint by another police officer.⁵⁰ In at least one case known to Amnesty International the police officer who questioned a Vietnamese victim of alleged police ill-treatment⁵¹ clearly lacked the sensitivity and impartiality necessary to conduct such an interview. According to an interpreter who was present during the interrogation in question, the officer concerned was "loud and verbally intimidating" and repeatedly accused the victim of lying. The victim's lawyer raised the matter with the senior officer in charge of the investigation, but the only immediate consequence was that the police dispensed with the services of the interpreter for a short period. (Later on the officer in question ceased to be involved in the case.)

In most of the cases examined by Amnesty International, however, it has been the public prosecutor who has interviewed the victim. In such cases the prosecuting authorities have been able to form a personal impression of the veracity of the victim's evidence. Yet they have not always sought to do the same with the suspected police officer who has generally been interviewed by the investigating police officers. They have then passed on the results or transcripts of their interviews to the public prosecutor.⁵²

Such a practice is unlikely to increase public confidence, or the confidence of victims, in the impartiality and thoroughness of the complaints procedure. It also appears to be inconsistent with official guidelines which exist for the conduct of criminal proceedings which state that:

"In important cases, or in cases which are difficult by their nature or in terms of the points of law they raise, public prosecutors should themselves clarify the facts of the case at the earliest point of involvement. In particular they should visit the scene of the crime and should themselves question the suspect and the most important witnesses⁵³."⁵⁴

48Section 152 (2) of the German Code of Criminal Procedure

49See *Strafprozeßordnung* - a commentary on the German Code of Criminal Procedure by Dr T Kleinknecht, K Meyer, and Dr L Meyer-Goßner, 41st Edition, Munich 1993, § 163, note 3.

50A victim could refuse a police request to report for questioning. If he did so, he would then automatically be interviewed by the public prosecutor in charge of the investigation.

51The victim had alleged that a Berlin police officer had sprayed tear gas in his eyes and had beaten and kicked him.

52As a suspect the officer concerned could, of course, always make use of his right to silence and make no statement at all - either to the police or to the prosecuting authorities.

53In legal terms the victim of police ill-treatment is a witness to a criminal act.

54Section 3 I of the Guidelines for the Conduct of Criminal Proceedings

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Amnesty International believes that all credible allegations of police ill-treatment should be treated as "important cases" within the meaning of these guidelines and that the prosecuting authorities should automatically interview the victim, the suspected police officers and any other witnesses, and where appropriate should examine the scene of the ill-treatment.

3.3 The role of the prosecuting authorities in investigating allegations of police ill-treatment

As "lord of the investigation"⁵⁵ it is the duty of the public prosecutor to ensure that the necessary evidence is obtained and that all the circumstances of the case, whether incriminating or exonerating⁵⁶, are examined.

There is some evidence in cases examined by Amnesty International that the prosecuting authorities have not always been thorough or impartial in their investigations of police ill-treatment. In particular they often seem to regard the testimony of police officers as more credible than that of the victim of alleged ill-treatment.

The case of Mehmet S. (Bremen)

On 1 March 1992 Mehmet S., a Turkish Kurd, was stopped by police officers in Bremen on suspicion of contravening the narcotics law. He attempted to flee but was caught by police officers and thrown roughly to the ground. Mehmet S., who was 14 years old at the time of his arrest, alleged that his arms were bent backwards causing him to cry out in pain. He later underwent an operation on a fracture to his arm.

In September 1993 the Bremen Public Prosecutor closed the investigation, concluding that it had not been possible to ascertain which officer had caused the injury to Mehmet S.'s arm, or exactly how the injury had occurred. Yet in their investigation the prosecuting authorities had neither questioned the doctors who treated Mehmet S. about the nature of his injury, nor had they sought any independent expert medical opinion on how his injury might have occurred. Mehmet S.'s lawyer therefore appealed against the decision to reject his complaint and in November 1993 the Bremen Director of Public Prosecutions ordered that further investigations be carried out into the cause of the detainee's injury.⁵⁷

The case of Abdulkerim Balikci (Berlin)

In the early hours of the morning of 3 August 1993, Turk Abdulkerim Balikci was on his way to visit a friend in the Charlottenburg district of Berlin. After arriving at his friend's flat he saw a large number of police officers and several police vehicles on the opposite side of the street in front of a bar. A man approached Abdulkerim Balikci, stating that he was a

⁵⁵See Strafprozeßordnung - a commentary on the German Code of Criminal Procedure by Dr T Kleinknecht, K Meyer, and Dr L Meyer-Goßner, 41st Edition, Munich 1993, § 163, note 3.

⁵⁶Section 160 (2) of the German Code of Criminal Procedure

⁵⁷In February 1994 an independent medical expert concluded that it was not possible to establish exactly how the injury had occurred and therefore which officer had caused it. He also stated that "a slight or moderate use of force" could have been enough to cause the injury. The Director of Public Prosecutions therefore concluded that there was not sufficient evidence to bring criminal charges against any police officer.

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police officer and requesting to see his identity papers. Abdulkerim Balikci states that he asked the man, who was wearing civilian clothes, for proof of his identity but that he was told to shut his mouth and again asked for his papers. Abdulkerim Balikci explained that he did not have his identification papers on him. Upon hearing this the man then pushed him against a wall and placed a handcuff on one wrist. As he tried to struggle free, Abdulkerim Balikci was pushed to the ground by the first man and by a second, uniformed, police officer. Abdulkerim Balikci alleges that a third officer who had arrived on the scene then began to strangle him with one hand. This lasted for one or two minutes. Abdulkerim Balikci screamed with pain and in fear, at which point one of the officers reportedly kicked him on the side of the head. He was then handcuffed, pushed into the back of a police vehicle and told to sit on the floor. According to Abdulkerim Balikci, one of the officers at the scene asked his colleague for a glove, climbed into the car and proceeded to strike him around the head and on the right shoulder. The officer then got out of the car. Approximately eight to ten officers stood close by talking and laughing.

Abdulkerim Balikci was taken to Bismarck Street police station where he asked to be informed of the reason for his arrest. According to the detainee his inquiry met with the response, "Shut your mouth". His personal belongings were taken from him and he was placed in a cell. Shortly afterwards his nose began to bleed heavily. He was given some paper tissues and asked if he needed a doctor. When he replied in the affirmative, he was told that he should take care of it himself, as it could take several hours before a doctor could come to the police station.

After his personal details had been taken from a bank card he had been carrying, Abdulkerim Balikci's belongings were handed back to him and he was allowed to leave the station. He wandered through the streets and arrived at his friend's place at approximately 9am in a confused state. Later the same day he visited his doctor who identified the following injuries: multiple bruising of the face, left elbow, both wrists, right knee, chest and lower back; multiple abrasions to the right cheek and eyebrow and to the right knee; and bruising caused by strangulation.

Abdulkerim Balikci made a formal complaint about his ill-treatment. He was subsequently accused by the Berlin police authorities of attacking and physically injuring police officers in the course of an identity check and of resisting arrest.

In July 1994 the prosecuting authorities rejected Abdulkerim Balikci's complaint, concluding that his injuries were the result of his attempts to resist arrest.⁵⁸ In reaching this conclusion the authorities quoted several witnesses, including one who claimed to have seen Abdulkerim Balikci resist arrest. However, it had been established during the course of the investigation that this witness could not have been present when Abdulkerim Balikci was arrested. When Abdulkerim Balikci's lawyer pointed out this inconsistency to the prosecuting authorities, the witness concerned was asked to appear for questioning again. He refused, however, and "began to make `a scene'...claiming that he was 50% disabled and did not want to make a statement"⁵⁹. The witness was not in fact questioned again, yet his contradictory evidence was still quoted by the Berlin Public Prosecutor in support of the police officers' version of events.

⁵⁸With regard to the allegations that Abdulkerim Balikci had been ill-treated inside the police car, the prosecuting authorities concluded that there was not enough evidence to charge the officer concerned.

⁵⁹Extract from the appeal made by Abdulkerim Balikci's lawyer against the decision of the prosecuting authorities not to charge the officers.

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In the written explanation of his decision not to charge the officers alleged to have ill-treated Abdulkerim Balikci the public prosecutor also quoted another witness as saying that she had "not seen the plainclothes officers hit [Abdulkerim Balikci]". Yet according to the records of the investigation the same witness had also said:

"I am of the opinion that the man lying on the ground [that is, Abdulkerim Balikci] was subjected to bodily injury. The way the officers grabbed hold of the upper part of his body and repeatedly pushed him to the ground, the way he was really shaken, must have been painful to [him]...I repeat, I am of the opinion that these strong officers could have held him in such a way that he could not have moved at all."⁶⁰

This evidence that the police officers had used excessive force in arresting Abdulkerim Balikci was rejected by the prosecuting authorities on the grounds that it conflicted with testimony from another witness who had said that the officers arresting Abdulkerim Balikci "could not cope"⁶¹ with him. Abdulkerim Balikci's appeal for a judicial review of the prosecuting authorities' decision not to charge the officers who he alleged had ill-treated him was rejected in December 1994. In January 1995 Abdulkerim Balikci was charged with resisting arrest and assaulting officers.

The case of Thiyagarajah P. (Berlin)

At 5.40pm on the evening of 14 July 1992 Thiyagarajah P., a Sri Lankan Tamil, was cycling to work when he was stopped by two plainclothes police officers in the Tiergarten district of Berlin. One of the officers examined Thiyagarajah P.'s bicycle in order to check the number on the frame. Unable to locate the number in the accustomed place, the officer claimed that the Sri Lankan Tamil had stolen it. Thiyagarajah P. denied this, and was able to show the officer the receipt he had been given upon purchasing the bike. However, the officer reportedly screwed up the receipt while his colleague handcuffed Thiyagarajah P. This act was carried out with such force that Thiyagarajah P. immediately felt intense pain in his left arm.

After confirming his identity by radio, the two officers allegedly began to verbally abuse Thiyagarajah P., saying that it was only foreigners who committed such acts of theft. Thiyagarajah P. was then taken to a nearby police station and was questioned in front of several other officers about the alleged theft. At one point the officer who had handcuffed him in the street raised his hand as if to strike him, and was only prevented from so doing by a colleague. Shortly afterwards the two officers who had arrested Thiyagarajah P. took him to another police station. There, according to the detainee, the handcuffs were removed and he was placed in a cell. Several hours later he was allowed to leave the

⁶⁰Taken from Abdulkerim Balikci's appeal of 25 August 1994 against the prosecuting authorities' decision to reject his criminal complaint of police ill-treatment.

⁶¹Quote taken from the decision by the Public Prosecutor attached to the Berlin Higher Regional Court of Appeal to reject Abdulkerim Balikci's appeal against the dropping of his criminal complaint, 19 September 1994.

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station.

Thiyagarajah P. alleges that during the time he spent in police custody the injury to his by now swollen hand was not noted, nor was he permitted to ring his employer to explain his absence from work.

Because of the pain he was still experiencing in his left arm, Thiyagarajah P. consulted his family doctor the next day. It was diagnosed that he had suffered a fracture to his left wrist, consistent with the account he had given of his arrest. Two weeks later Thiyagarajah P.'s lawyer made a written complaint to the Berlin police, alleging that his client had been ill-treated.

In December 1993 the Berlin Public Prosecutor dismissed the complaint citing the following principal reasons:

- Thiyagarajah P. had not been able to say for certain when his wrist was injured. When questioned about it he was "only" able to confirm that his hand had hurt him when he was wearing the handcuffs, and that after the handcuffs were removed his wrist "really hurt", and was also red and swollen;
- since he admitted that he did not know when exactly his injury had occurred, he was therefore "not able to exclude the possibility that it did not happen in the presence of the suspected [officer], but rather during or after the removal of the handcuffs by an unknown officer";
- he did not report his injury to any officer while in custody;
- both officers who arrested Thiyagarajah P. denied handcuffing him at all, while other officers either did not remember seeing the detainee in handcuffs or had no clear recollection of the events on the day in question;
- although medical evidence established that Thiyagarajah P.'s wrist had been broken, "the doctors who treated him did not make their diagnosis until 15 July, that is, several hours after the alleged ill-treatment".⁶²

⁶²Decision by the Public Prosecutor attached to the Berlin Regional Court on Thiyagarajah's criminal complaint of ill-treatment, 10 December 1993.

Thiyagarajah P. appealed against the decision of the prosecuting authorities to dismiss his complaint. This appeal was also rejected. This time another theory to explain how the injury may have occurred was advanced - Thiyagarajah P.'s wrist could have been broken as a result of the detainee's own actions, since:

"He admitted when questioned by the prosecuting authorities that, at the request of the officers, he had tried to take a bank card out of his trouser pocket with his hands still handcuffed. He found this difficult and the officer ridiculed him for it."⁶³

Finally, in rejecting his appeal the prosecuting authorities referred to other "contradictions" in Thiyagarajah P.'s evidence, namely that in his written statement he had said that he was allowed to leave the station at about 10pm. When questioned by the public prosecutor he had changed this to 10.55pm. Police records showed, however, that he was released at 9.05pm.

In rejecting Thiyagarajah P.'s complaint the prosecuting authorities seemed prepared to give credence to the most contradictory and implausible explanations. First of all the possibility is advanced that he never had been handcuffed in the first place. Then it is suggested that even if he had been handcuffed (in which case, of course, the officers who said that he was not must have been lying) it was not clear exactly how his wrist had been broken; indeed, it may have been the victim's own fault. And even if it was the fault of a police officer, he could not be identified anyway. The medical evidence is of no help either because Thiyagarajah P. did not go to a doctor until several hours after he left the station. Finally, the prosecuting authorities cast doubt on the testimony of the victim - who, lest we forget, has been wrongly suspected of theft, arrested, detained, denied his right to inform someone of his arrest, and who has suffered a serious injury - because he could not remember the exact time he was released from the station.

In many cases examined by Amnesty International public prosecutors have rejected the victim's complaint of ill-treatment on the grounds that the testimony presented by the complainant has been contradicted by that of the suspected officer - in other words, it is the victim's word against the police officer's. Under such circumstances, the prosecutor concludes, it is not possible to charge the officer because there is not "sufficient suspicion that he has committed a crime", as required under the Code of Criminal Procedure⁶⁴. However, there is evidence that public prosecutors appear to apply a much more restrictive interpretation of this section of the Code of Criminal Procedure than the law allows. Thus, for example, leading legal commentators have concluded that:

"The imprecise legal concept of 'sufficient suspicion that a criminal act has been committed' leaves a not inconsiderable amount of room for personal judgment...It can be left to a court to resolve the contradictions between the information provided by the suspect and the results of the evidence obtained."⁶⁵

⁶³Decision by the Public Prosecutor attached to the Berlin Higher Regional Court of Appeal to reject Thiyagarajah P.'s appeal against the rejection of his criminal complaint, 21 March 1994.

⁶⁴Sections 170 and 203 - see page 28.

⁶⁵See *Strafprozeßordnung* - a commentary on the German Code of Criminal Procedure by Dr T Kleinknecht, K Meyer, and Dr L Meyer-Goßner, 41st Edition, Munich 1993, § 170, note 1.

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As we have seen, the prosecuting authorities very seldom leave it to the courts to decide (that is, bring charges against the suspected officers), even where there is credible evidence to support the victim's allegations that he was ill-treated. Instead they reject the complaint. Yet in the relatively rare cases where courts do become involved, it appears that they are often better able to assess conflicting and contradictory statements than public prosecutors. Thus in finding three officers guilty of ill-treating Habib J. (see page 3) a Berlin court commented in its written ruling that it found no reason to doubt the credibility of the evidence presented by Habib J. and by the witness who supported the victim's version of events, whereas the testimony of the police officers and of another witness appeared biased and lacking in credibility.

Similarly, while the Hamburg prosecuting authorities twice rejected a complaint by German citizen Frank Fennel that he was badly ill-treated by police officers in July 1991, a civil court found enough evidence to award the victim compensation, concluding that he had been "badly and systematically beaten" at the scene of his arrest by officers who had "taken the law into their own hands" after one of their colleagues had been hit by a bottle.⁶⁶ The court found that one officer (whom it named) had deliberately and unnecessarily punched Frank Fennel in the face and rejected the suggestion that the victim's injuries were the result of his attempts to resist arrest, commenting that "it seems inconceivable to the court that three officers are not capable of arresting an individual who is resisting without causing him serious physical injury". The court also criticized the testimony of police officers, concluding, with reference to the evidence given by one officer that "there is a suspicion that further details were not provided [by the officer] in order not to harm his colleague".⁶⁷

Amnesty International calls upon the German authorities to ensure that all allegations of police ill-treatment are investigated by the prosecuting authorities promptly, impartially and thoroughly. In their investigations public prosecutors should pay special heed to the principles established in German law and in international human rights instruments regarding the use of force by law enforcement officials.⁶⁸ If a criminal investigation establishes that the allegations of the complainant are credible, it should be left to a court to assess the veracity of conflicting or contradictory testimony.

The failure of the Hamburg authorities to charge police officers from stations 11, 15, 16 and 21 for ill-treating Frank Fennel and other detainees in their custody was criticized by Amnesty International in January 1994.⁶⁹

In November 1994 the Hamburg Ministry of Justice published a press statement in which it announced the result of an inquiry by a specially constituted working group into 118 investigations that had been completed by the authorities into allegations that police officers had committed "abuses and racially-motivated offences". In its report the working group strongly criticized both the role of the police and of the prosecuting authorities in their investigations, concluding that in 53 cases police officers had not conducted their investigations "with the full intensity necessary" and that the prosecuting authorities had

⁶⁶Frank Fennel's injuries included concussion, multiple bruising and abrasions, and a bruised kidney, as a result of which he was hospitalized for a week. His case is described in detail in Federal Republic of Germany: Police ill-treatment of detainees in Hamburg (AI Index: EUR 23/01/94).

⁶⁷Written judgment of the Hamburg Regional Court in the case Frank Fennel v. the Free and Hanseatic City of Hamburg, 19 February 1993.

⁶⁸See section 4.1 for a more detailed discussion of these principles.

⁶⁹See Federal Republic of Germany: Police ill-treatment of detainees in Hamburg (AI Index: EUR 23/01/94). AI Index: EUR 23/06/95 Amnesty International May 1995

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not fulfilled their role of directing police investigations actively enough, and in some cases had even "failed to criticize deficiencies in the police's investigative work".⁷⁰

Amnesty International welcomes the inquiry conducted by the Hamburg authorities into the way in which investigations into alleged police abuses had been carried out. The organization recommends that the Berlin authorities conduct a similar independent inquiry into all investigations carried out by the police and prosecuting authorities into the alleged ill-treatment of foreigners and members of ethnic minority groups by Berlin police officers during the last three years. The body carrying out the inquiry should be empowered to recommend whether in any of the cases it has examined criminal and/or disciplinary charges should be brought against any of the officers involved, and whether compensation should be awarded to any of the complainants. The findings of the inquiry should be made public.

3.4 The right of victims to receive compensation and rehabilitation

None of the foreign or ethnic minority victims whose cases are described in detail in this document are known to have received compensation for the injuries they suffered at the hands of the police.

Article 14 (1) of the Convention against Torture requires each State Party to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible". Article 2 (3) (a) of the ICCPR recognizes that all persons whose rights under the ICCPR have been violated "shall have an effective remedy".

In Germany anyone who claims to have been subjected to torture or to cruel, inhuman or degrading treatment or punishment by a police officer has a right to compensation under section 839 of the Civil Code which grants damages for every form of unlawful and culpable breach of official duty. If an application by the victim for compensation under section 839 is rejected, the victim can commence civil proceedings.

Before considering the compensation question most lawyers will await the outcome of the criminal investigation by the public prosecutor. If the criminal investigation has been successful in establishing that ill-treatment took place, without being able to identify the particular officer responsible for it, the victim's chances of being awarded compensation under section 839 of the Civil Code are good, because the victim's claim for compensation is not directed against any particular officer but against the authorities on whose behalf the officer has acted, that is the *Land*. If, on the other hand, the criminal investigation by the prosecuting authorities fails to establish that the injuries inflicted on the detainee were the result of a criminal act by police officers, then an application for compensation has little prospect of succeeding. Thus, for example, the application for compensation lodged by Thiyagarajah P. (see page 38) under section 839 of the Civil Code was rejected by the Berlin authorities on the grounds that there was "no evidence that the officers concerned acted illegally or culpably". Thiyagarajah P.'s lawyer advised his client not to commence civil proceedings against the police because he estimated the chances of success as too small.

Amnesty International believes that unless all investigations into alleged police ill-treatment are carried out promptly, impartially and thoroughly, the victim's right to fair and adequate compensation will not be

⁷⁰According to the Ministry of Justice's press statement the results of the inquiry had been passed on to the Hamburg Director of Public Prosecutions who would decide whether to reopen investigations into individual cases of alleged police abuses. The minister also announced that more resources would be made available to the prosecuting authorities for strengthening its special unit responsible for investigating alleged police abuses and abuses by other public officials.

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effective.

3.5 Counter-complaints against complainants

In a high proportion of cases reported to Amnesty International the victims of alleged police ill-treatment have been issued with a counter-complaint for "resisting state authority".

According to section 113 (1) of the German Criminal Code ("Resistance to law enforcement personnel"):

"Whoever, by force or the threat of force, offers resistance to, or physically attacks, a public official or a member of the armed forces authorized to enforce statutes, official decrees, judgments, judicial rulings or orders, in the performance of such official acts, shall be punished by up to two years' imprisonment or by a fine."

Paragraph two of section 113 specifies that prison sentences of between six months and five years can be imposed in "especially serious cases".

In the cases examined by Amnesty International there is some evidence that police officers have issued counter-complaints against the victims of ill-treatment in order to be able to justify the infliction of injuries on detainees, should they later choose to complain of ill-treatment.

Such counter-complaints would violate Germany's obligations under Article 13 of the Convention against Torture which requires States Parties to "Take steps to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

The case of Bülent Demir (Berlin)

At about 2am on 4 April 1994 Bülent Demir - a 17-year-old German citizen of Turkish origin - was spraying the wall of a house with paint near his parents' home in Berlin when he was approached by a young man. According to a complaint later lodged by Bülent Demir, the man demanded to know what he was doing, then grabbed Bülent Demir's hair, pulled his head down and tried to remove the mask he was wearing. Bülent Demir managed to break free and was starting to run away when he heard the man shout, "Stop, I'm a policeman!". Bülent Demir did not believe this at first, thinking it was not normal for police officers to be on duty on their own at night. However, when the man threatened to shoot him if he did not stop and another man appeared from behind a bush, Bülent Demir realized they must be police officers, stopped running and lay on

the ground, shouting that he was giving himself up. One of the officers then pulled his arms up behind his back by taking hold of his left wrist and the little finger of his right hand. He then handcuffed Bülent Demir, who was still lying on the ground, and allegedly began to assault him, punching him in the kidneys and hitting him in the face. The other officer then kicked him in the head twice - on the left ear and on the back of his head. This caused Bülent Demir's face to hit the tarmac with such force that two of his front teeth broke. During the assault the officers also reportedly shouted verbal insults. When Bülent Demir protested that his teeth were broken, one of the officers responded by punching him again in the back.

When another three police officers arrived at the scene Bülent Demir was pulled to his feet and taken to the main road where he was forced to lie in the bicycle lane, despite the fact that his face was injured and he was still in handcuffs. One officer then removed his wallet from his pocket to check his identity. According to Bülent Demir when the officer saw that he was a member of a local sports centre and body-building club the officer demanded to know why he had not "given him a fight". After his details had been checked, Bülent Demir was finally told he could go home and was handed a form about damage to property. He was also told he would be charged with resisting police authority. Before leaving, Bülent Demir asked the officers for their names and numbers. They refused to give these and only handed him the number of the station they were from.

After walking home at about 2.30am, Bülent Demir went with his father to a police station in order to complain about the ill-treatment. There he was told he needed a medical certificate. He therefore went straight to a hospital where an X-ray revealed a complicated fracture to his finger. He then returned to the police station and lodged his complaint. As he was doing this he was told that there was no point in complaining as the police would give a different version of events.

The medical certificate issued by the hospital shows that Bülent Demir had also suffered bruises, abrasions, and his two front teeth had been broken. He later underwent an operation to his finger and needed to spend several days in hospital. Another medical certificate issued by a family doctor on 14 April 1994 shows that following the incident he had also suffered from buzzing noises in his ear, hearing loss and nose bleeds.

In July 1994 Bülent Demir was charged with causing criminal damage and with resisting state authority. By the end of March 1995 the investigation into his complaint of ill-treatment was still continuing.

The case of Mimoun T. (Frankfurt am Main, Hesse)

On the evening of 7 October 1992 at about 6.30pm, Mimoun T. and a friend were stopped near Frankfurt am Main railway station by several uniformed police officers. According to a statement made by Mimoun T. a Moroccan, one of the officers shouted at him to put his hands above his head and stand against the wall. Mimoun T. asked the officers if they wanted to see his identity papers, but before he could show them he was kicked by an officer and struck on the back of the head by a police baton. After falling to the ground Mimoun T. was handcuffed. He was then kicked again and his head was banged against the ground. His ill-treatment was witnessed by his friend. Mimoun T. was then pushed into a police van where he alleges he was insulted by one of the officers ("Don't look at me, look out the window, you shitty foreigner"), kicked in the testicles and struck in the face.

At the police station Mimoun T. was asked for his asylum papers. He explained that he was not an asylum-seeker, but was legally resident in Germany. On hearing that Mimoun T. had a job working at the Post Office, one of the officers allegedly looked at his colleague and said, "You'll be in trouble", to which the officer in question replied, "He resisted [arrest]".

At this point Mimoun T. felt dizzy and collapsed. He was taken to hospital where the following injuries were identified: multiple bruise marks to the face and to the lower limbs,

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two weals running down his back and suspected concussion. A diagnosis by the police officers who brought him to the hospital that he had suffered some sort of epileptic fit was rejected as "questionable" by the doctor who treated him. Mimoun T. spent several days in hospital as the result of his injuries.

According to press statements made by the police, Mimoun T. and his friend had been stopped on suspicion of drugs dealing. Mimoun T. had refused to show his identity papers when asked and had "kicked out" at the officers. He had to be "immobilized with two blows from a police baton". Mimoun T.'s wife and his lawyer lodged a complaint regarding his ill-treatment with the Frankfurt Public Prosecutor. The police also brought a complaint against Mimoun T. for resisting state authority. In February 1993 Mimoun T.'s lawyer was informed that the investigation into his client's allegations of police ill-treatment had been suspended, pending the outcome of the investigation into the complaint by the officers concerned that he had resisted their authority. This complaint was rejected by the prosecuting authorities in August 1993 in accordance with section 153 of the Code of Criminal Procedure ("Non-prosecution in the case of minor

offences"). However, at the beginning of March 1995, almost two and a half years after Mimoun T.'s alleged ill-treatment the investigation into the actions of the officer concerned had still not been completed.

Amnesty International urges the German authorities to take effective measures, as required by Article 13 of the Convention against Torture, to ensure that people who bring complaints of ill-treatment against police officers are protected against intimidation. Such measures should include the careful scrutiny by the prosecuting authorities of police complaints that detainees have resisted state authority, particularly those which are filed only after complaints of police ill-treatment are brought. Where complaints are filed simultaneously by a detainee alleging police ill-treatment and by police officers alleging resistance to state authority, Amnesty International recommends that the complaint against the victim be suspended until the result of the investigation into the behaviour of the police officers concerned has been completed.

4 The role and responsibility of the police

4.1 The use of force by police officers

According to Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials: "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Principle 5 states that: "Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall...exercise restraint in such use and...[shall] minimize damage and injury." Finally, the Code of Conduct for Law Enforcement Officials stipulates (in Article 3) that: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

The principle underlying the use of force by German law enforcement officials is that of proportionality. This principle lies at the heart of all German civil and criminal law and provides that laws, action and measures of public bodies must not go beyond those strictly required to achieve the legal purpose.⁷¹ Indeed, the principle of proportionality is, according to a ruling by the German Constitutional Court, enshrined in the constitution itself⁷², and the importance of this principle is reflected clearly in the Police Laws of the *Länder*. For example, section 11 (1) of the Berlin General Law on Security and Order requires that in deciding which measures to use in tackling any given situation, law enforcement officials are to choose that which "is likely to do least harm to the individual and to the public in general".

Amnesty International believes that in many of the cases it has examined, police officers have used excessive amounts of force in arresting unarmed individuals, some of whom have suffered serious injury as a result.

The case of Nasreddine Belhadebs (Erfurt, Thuringia)

During the afternoon of 29 September 1993 Nasreddine Belhadebs - an Algerian asylum-

⁷¹See German Law and Legal System, Nigel Foster, Blackstone, 1993, page 112.

⁷²See Strafprozeßordnung - a commentary on the German Code of Criminal Procedure by Dr T Kleinknecht, K Meyer, and Dr L Meyer-Goßner, 41st Edition, Munich 1993, introductory comments, pages 4-5.

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seeker - was on his way home in the eastern German town of Erfurt. According to Nasreddine Belhadebs he was suddenly set upon by three men in civilian clothing who forced him to the ground and proceeded to hit and kick him as he lay on his stomach. As they wrenched his arms backwards one of the men knelt on his shoulder. Bleeding from his nose, Nasreddine Belhadebs cried out for help but the men continued to hit him and ordered him to be quiet. Passers-by ran to his aid and asked the men why they were hitting him. Nasreddine Belhadebs states that it was only when they replied that they were police officers that he realized for the first time who they were.

Nasreddine Belhadebs was handcuffed and taken to Andreas Street police station. He was taken to a room where other foreigners were also being held and ordered to undress. After being searched, he put on his clothes and was handcuffed to a radiator and left in a room with the other detainees for about one hour. He was then finger-printed and photographed. When he complained to a police officer about his ill-treatment he was told that his arrest had followed normal procedure.

Only when he was interviewed by a plainclothes officer did he discover that the foreigners had all been arrested on suspicion of selling drugs. The officer did not say that Nasreddine Belhadebs himself was a suspect. After a short period he was told he could leave the station, but he refused to do so until his shoulder - which was very painful - had been examined by a doctor. An ambulance was called which took him to Erfurt Hospital where a fracture to his right shoulder was diagnosed. Nasreddine Belhadebs had to undergo an operation on his injured shoulder on 6 October 1993.

On 5 October 1993 Nasreddine Belhadebs lodged a complaint about his ill-treatment with the Erfurt Public Prosecutor's office. In his statement he reiterated that the police officers had neither spoken to him nor told him to stop before attacking him on the street.

It was not until nine days later that the police issued a counter-complaint against Nasreddine Belhadebs accusing him of trying to free himself from their grasp after he had been apprehended. In their complaint the police also allege that they had called out "Stop, police!" several times to Nasreddine Belhadebs. He, however, had ignored these requests. The police also state that one of the officers involved had shown the detainee his police badge.

On 18 January 1995 the complaint against Nasreddine Belhadebs of resisting state authority was dropped in accordance with section 153 of the Code of Criminal Procedure ("Non-prosecution in the case of minor offences"). Two days later the Erfurt prosecuting authorities discontinued the investigation into Nasreddine Belhadebs's complaint of police ill-treatment, concluding that although the officers who arrested him had used a disproportionate amount of force, it could not be proved that they had acted with criminal intent. The question as to whether the officers had been criminally negligent in their actions was left open because, according to the prosecuting authorities, even if it could be established that they had, it would still not be possible to identify which particular officer had been responsible for breaking the complainant's shoulder. The prosecuting authorities' seven-page decision to reject Nasreddine Belhadebs's complaint made no mention of the complainant's allegations that the officers concerned had hit him and that passers-by had reportedly witnessed this.

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The issue of the use of excessive force by police officers was raised by Amnesty International with the Hamburg authorities following publication of its paper in January 1994 in which it described its concerns regarding the case of Frank Fennel (see page 41). Among its recommendations the organization had urged the Hamburg Minister of Internal Affairs to conduct a thorough re-examination of the instructions issued to police officers regarding the amount and type of force which they are permitted to use when arresting or restraining detainees, and on the training officers receive in this area, in order to ensure that these conform with international standards.

In December 1994 the Hamburg Minister of Internal Affairs informed Amnesty International that the principles the organization had referred to were taken fully into account in the service instructions of Hamburg police officers. However, the minister added that:

"Nevertheless, these principles must be repeatedly clarified within the framework of further education and training programs...In particular, the training which officers receive in techniques of self-defence and physical [restraint] was reviewed following the police operation of 30 May [1994]⁷³. As a result of this examination certain techniques used to hold or restrain people are no longer taught or used⁷⁴, and it is emphasized that 'bringing someone to the ground' when arresting them is not to be used as a standard technique but only as the individual circumstances of the situation require."

It would appear, therefore, that prior to the 30 May 1994 Hamburg police officers were being taught methods of physical restraint which were inappropriate, and potentially harmful, and that officers were exposing detainees to the risk of physical injury by violently throwing them to the ground where this was not necessary.

Amnesty International welcomes the review which the Hamburg authorities have carried out into components of their training programs which deal with the use of force. **In light of the organization's concerns that police officers in Germany have used excessive levels of force in order to restrain or arrest individuals, Amnesty International calls upon the police authorities of all the *Länder* and of the Federal Government to undertake similar reviews in order to ensure that their service instructions and training programs are consistent with the obligations laid down by the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Code of Conduct for Law Enforcement Officials.**

4.2 Disciplinary proceedings against police officers

Not only are the chances extremely small that a police officer who is alleged to have ill-treated a detainee will be charged, it is also unlikely that the same officer will face disciplinary sanctions.

Preliminary disciplinary proceedings into allegations of ill-treatment are normally opened at the same

⁷³During this operation Hamburg police officers allegedly punched German journalist Oliver Neß in the face and repeatedly struck him in the kidneys, pelvis and chest with their batons. His ill-treatment was witnessed by a friend who also saw police officers throw the journalist to the ground and pin him down while another officer removed his right shoe and deliberately and violently rotated his foot at the ankle, tearing the ligaments. Amnesty International described the alleged torture and ill-treatment of Oliver Neß in its publication Federal Republic of Germany: A Summary of concerns in the period May - October 1994 (AI Index: EUR 23/08/94).

⁷⁴In February 1995 the Hamburg authorities clarified that the technique in question was the Fußdrehhebel, a type of foot lock (Fuß = foot, drehen = to turn, Hebel = lever).

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time as the criminal investigation into the same allegations, but are suspended until the latter is complete. According to the Berlin State Disciplinary Regulations the findings of the criminal investigation are not binding on the authorities carrying out the preliminary disciplinary investigation, but they "can be used as a basis for the decision [of the disciplinary authorities] without being re-examined"⁷⁵. If the criminal investigation reveals evidence that officers have breached any legal provisions, service instructions or internal police regulations, formal disciplinary proceedings will be launched. In fact this happens very rarely: thus although there were approximately 600 complaints of ill-treatment by Berlin police officers in 1992, disciplinary proceedings were opened in only 20 cases.⁷⁶ In Hamburg 140 criminal investigations into alleged police ill-treatment were opened in 1993, but disciplinary proceedings were instigated in only four cases.⁷⁷

Amnesty International calls upon the German authorities to ensure that full, impartial and effective disciplinary investigations are conducted into all complaints of police ill-treatment where there is prima facie evidence that police officers have ill-treated detainees in their custody. Such disciplinary investigations should not be bound by the findings of any criminal investigation. They should examine all aspects concerning the treatment of the detainee in question, including allegations that detainees have been subjected to excessive force or deliberate ill-treatment or have been denied rights guaranteed in international treaties to which Germany is a party or in German law. Officers found to have infringed legal provisions, service instructions or internal police regulations on the treatment of detainees should be subject to disciplinary sanctions. Furthermore, Amnesty International recommends that law enforcement officers against whom repeated complaints of ill-treatment are filed should be transferred, without prejudice, to duties not directly related to arresting, guarding or interrogating detainees. Officers charged with an offence involving the commission of torture or ill-treatment should be immediately and automatically suspended from such duties pending the court's decision.

⁷⁵Section 18 (2) of the Berlin State Disciplinary Regulations, applicable to all public officials (Beamte) in the Land of Berlin.

⁷⁶Response of the Government of the Federal Republic of Germany to the report of the CPT, July 1993, page 6.

⁷⁷Hamburg Government reply to a written parliamentary question, May 1994.

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4.3 Police training

In its July 1993 report to the German Government the CPT stressed the importance of the "scrupulous implementation" of training programs for police officers. In its response the German Government wrote that:

"Instruction on basic rights, including that of physical integrity...as well as the prohibition on mentally or physically ill-treating detained persons...is treated as a separate item in training in the framework of the subject "State and constitutional law", in basic training as well as in all in-service training courses."⁷⁸

Government authorities have also stressed to Amnesty International the importance of racial awareness as a core component of police training. Thus in July 1993 the Ministry of Internal Affairs of Berlin wrote in reply to correspondence from Amnesty International that:

"As part of the Berlin Police's training and continuing education program the department responsible for 'Political Education' informs officers about the history, culture and socio-economic situation of foreigners in the Federal Republic of Germany and especially in Berlin."

The ministry also informed Amnesty International that every police trainee in Berlin took part in conflict management training. This included several hours of role-playing "about opinions and prejudices with respect to minorities as well as corresponding strategies of conflict resolution".

Amnesty International is also aware that two-day seminars are offered on a voluntary basis, mainly to senior police officers in Berlin. These courses cover such topics as legislation on foreigners and asylum, the use of crime statistics, and the origin and dismantling of prejudice.

While Amnesty International believes that these are important components in any police training, the organization is nevertheless concerned that on their own they have not proved adequate to prevent Berlin police officers from ill-treating detainees in their custody.

Amnesty International therefore urges the federal and *Land* ministries of internal affairs to review training policies and programs in order to ensure that education in the international norms and standards of human rights, particularly standards on the prohibition of torture and ill-treatment without distinction of any kind, including race, colour, sex, language, religion and national or social origin, are adequately and clearly represented. In devising or implementing such training programs the authorities should:

- Seek to involve non-governmental organizations in the design, administration, follow-up and evaluation of the training program.
- Ensure that training initiatives are offered to all, not just senior officers. One approach could be to train entire units in order to make sure that each participant takes the training seriously and to avoid the problem of negative peer pressure when the individual trainee returns to his unit.
- Undertake a continuous evaluation of the effectiveness of the training offered and revise this in the light of identified short-comings and new opportunities. Such evaluation should not only be done by the trainers, trainees and police authorities, but by an independent body which can carry out an objective

⁷⁸Response of the German Government to the report of the CPT on its visit to Germany, July 1993, page 3. Amnesty International May 1995AI Index: EUR 23/06/95

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evaluation of the program's effectiveness.

- Ensure that specified officials assume responsibility for overall administration of such training programs and have support at the highest possible level.

It should, of course, be recognized that even the best training programs can only be effective if they are complemented by rigorous officer selection and monitoring procedures.

5 The response of the German authorities to Amnesty International's concerns

Amnesty International has been raising its concerns about alleged police ill-treatment with the federal and *Land* authorities of Germany since May 1992. Approximately half of the cases the organization has taken up have involved allegations of ill-treatment by Berlin police officers. In raising its concerns Amnesty International has generally sought information on individual cases from the ministries of justice and of internal affairs of the *Länder*, as these are responsible for the investigation of allegations and for the police respectively.

5.1 The response of the Berlin authorities

Amnesty International first wrote to the Berlin Ministries of Justice and of Internal Affairs regarding its concerns in May 1993. The organization has since been provided with information on all individual cases it has raised with the Berlin Justice Ministry. (Usually Amnesty International is told in reply to its inquiries that an investigation has been opened into the allegations of ill-treatment and that while the investigation is in progress no further details can be given.)

After receiving information on two individual cases from the Berlin Ministry of Internal Affairs in June and July 1993, Amnesty International was informed by the Minister of Internal Affairs in July 1993 that "the impression created in [the organization's] letters, that members of the Berlin police are partly or wholly hostile towards foreign citizens is not accurate" and that "on the contrary, I am of the opinion that within the police - as with the overwhelming majority of the population - no hostile attitude towards foreigners is detectable". The minister further informed Amnesty International that for "understandable reasons" he was unable to answer every individual letter from Amnesty International's members.

Since July 1993 Amnesty International has received no response from the Berlin Ministry of Internal Affairs regarding specific cases of alleged ill-treatment it has raised. The Berlin Ministry of Internal Affairs is the only one of the 16 *Länder* which has consistently failed to provide such information.

In January 1995 Amnesty International wrote to the Berlin Minister of Internal Affairs requesting a meeting with a representative of the ministry in order to discuss concerns the organization had raised in September 1994 regarding the alleged ill-treatment of Vietnamese. In a reply to Amnesty International, a representative of the ministry stated that since the Justice Ministry was responsible for all criminal investigations into alleged ill-treatment, there was "no further need for such discussions". In the last response on an individual case which Amnesty International received from the Berlin Ministry of Internal Affairs in July 1993, a representative of the ministry clarified its position regarding allegations of ill-treatment by Berlin police officers of foreigners:

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"In our opinion this is an artificially created, counter-productive debate about police action against persons suspected of criminal acts...The daily practice of police work shows that a small number of suspects demonstrate not only a negative attitude [towards the police] but even resistance, sometimes physical."

In many cases which Amnesty International has examined the organization finds it impossible to reconcile the injuries suffered by complainants with the reasonable and justified use of force provided for under the relevant international standards. Furthermore, it is clear that the behaviour of the victim can in no way justify the infliction of ill-treatment.

5.2 The response of the 16 Länder

Amnesty International has raised individual allegations of ill-treatment with many of the other 15 *Länder* over the past three years. All have supplied information on individual cases. The organization also raised more generally the issue of police ill-treatment with all 16 *Länder* in the Spring of 1993 within the framework of its campaign to combat racist police ill-treatment throughout Europe. In order to illustrate its concerns, Amnesty International described one case of alleged ill-treatment that had occurred in the town of Gränitz, in the *Land* of Saxony⁷⁹. The organization also formulated a list of recommendations that it believed could contribute to preventing such cases from occurring in the future. These recommendations were sent to all 16 *Länder*.

Of the 16 *Länder* three did not reply at all to Amnesty International's letters, one (Saxony) gave detailed information on the illustrative case of alleged ill-treatment, and a further eight responded that since the town of Gränitz was not in their territory they had forwarded Amnesty International's letters to the appropriate authorities in Saxony. Only four *Länder* provided the organization with information on measures they had taken to combat racism or commented on Amnesty International's recommendations.

Eighteen months later the collective response of the *Länder* to the by now deteriorating situation regarding the alleged police ill-treatment of foreigners was equally disappointing, indeed complacent. In November 1994 the Standing Conference of Ministers of Internal Affairs of the *Länder* placed the topic of "Police and Foreigners" on the agenda of one of its regular meetings. However, in his statement issued after the meeting, the chairman of the conference devoted almost as much space to criticizing Amnesty International's reports of alleged ill-treatment, as it did to presenting its proposals to tackle the problem highlighted by the organization. According to the chairman Amnesty International's "generalizations...harm the reputation of the police and damage the confidence of the population in the police". In making this "clarification" the Standing Conference was responding to a request from the German Police Union.

The message which this important meeting of ministers (responsible for the police forces of the 16 *Länder*) therefore seemed to be giving was that it is not the alleged ill-treatment of foreigners by police officers which damages the reputation of the police and reduces public confidence, but the reporting of these allegations.

In terms of concrete steps to combat the problem of police ill-treatment the Conference:

- stated that every individual case of suspected ill-treatment by police officers would be investigated with the necessary care and that the perpetrators of such acts would be punished;

⁷⁹See Federal Republic of Germany: The alleged ill-treatment of foreigners - a summary of recent concerns (AI Index: EUR 23/03/93).

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- commented that "increasing the social competence of police officers in their dealings with foreigners is an important and continuing task";
- agreed to carry out a research project on "Hostility to Foreigners and the Police" and finally,
- reaffirmed the decision of the previous year to employ foreigners in the *Länder* police forces and welcomed the fact that this had already begun to happen in most *Länder*.

Amnesty International believes that this response by the 16 *Länder* to be wholly inadequate to combat the problem of police ill-treatment of foreigners and members of ethnic minorities in Germany.

5.3 The response of the Federal Government

Reactions to Amnesty International's concerns from the Federal Government have been few, since the cases the organization has raised have fallen within the jurisdiction of the *Länder* authorities. In July 1994, however, following publication of the *Amnesty International Report* on human rights violations in 151 countries throughout the world, including Germany, the Federal Minister of Internal Affairs issued a press statement in which he rejected the organization's "allegations against the German police". The minister stated that:

"Whenever, in exceptional cases, allegations are made against the police these are investigated and prosecuted with rigour. The German police deserves clear political support and not unqualified, sweeping allegations."

In Amnesty International's view this response demonstrates clearly that the German Government has failed to recognize the seriousness of the concerns raised during the last three years by Amnesty International and by other human and civil rights organizations both inside and outside Germany⁸⁰. Yet as the signatory to the international human rights instruments cited in this paper the German Government has a particular duty to ensure that the obligations imposed by these instruments are respected by all the authorities of the Federal Republic of Germany.

6 Amnesty International's recommendations

Amnesty International calls upon the German Government, and upon the governments of the 16 *Länder*, particularly of Berlin, to demonstrate unambiguously their commitment to implementing Germany's obligations under human rights treaties and other international human rights instruments to take effective steps to end torture and ill-treatment by adopting the recommendations made in this document, where appropriate by introducing relevant legislation, instructions, directives, guidelines or initiatives either at national or *Land* level.

Summary of recommendations:

⁸⁰Such as Aktion Courage e. V. - SOS Rassismus in Bonn, die Internationale Liga für Menschenrechte in Berlin and the US-based organization Human Rights Watch.

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Statistics on complaints of police ill-treatment

- A central agency should maintain and publish regular, uniform and comprehensive statistics on complaints about ill-treatment by officers of the individual *Länder* and federal police authorities. These figures should include information on: the number of complaints of ill-treatment made against police officers over a specified period of time, the steps taken in response to each complaint and the outcome of any criminal and disciplinary investigations conducted into alleged police ill-treatment (*section 1.4*).

The rights of detainees and the obligations of police officers towards detainees in police custody

- At the outset of their detention people taken into police custody should be given a form outlining their legal rights. This form should be available in different languages. The detainee should certify that he has been informed of his rights (*section 2.5*).

- The right of detainees to be promptly informed in a language they understand of the reason for their arrest or detention should be respected (*section 2.1*).

- Police officers should adhere to their service instructions which require them to clearly identify themselves to members of the public when carrying out their duties, unless there are concrete and justifiable reasons for them not to do so (*section 2.1*).

- The federal and *Länder* police authorities should examine seriously whether all uniformed officers should be required to wear some form of personal identification on their uniforms - for example their service number or their name (*section 2.1*).

- Any detainee requesting medical assistance at a place of detention should be provided with the services of a doctor immediately (*section 2.2*).

- The right of detainees to inform a relative or person of their own choice of their detention should be respected (*section 2.3*).

- The right of detainees to make a complaint about their treatment in detention should be respected (*section 2.4*).

- A clear and comprehensive record should be kept of the period which any detainee spends in custody. This record should include details of: the time and reason for detention; any signs of injury exhibited by the detainee; requests by the detainee for medical assistance and the action taken in response to such requests; requests by the detainee to contact a relative or other person of his choice, including a lawyer, and the action taken in response to such requests; any complaints made by the detainee about his treatment, and the action taken in response to these complaints; when the detainee was informed about his rights while in detention. The lawyer of the detainee should have full access to such a custody record (*section 2.5*).

The investigation and prosecution of allegations of police ill-treatment

- All reports or allegations of police ill-treatment received by the police authorities should, as a matter of

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course, be passed immediately to the prosecuting authorities (*section 3.2*).

- The prosecuting authorities should themselves interview the victim, the suspected police officers and any other witnesses and, where appropriate, should examine the scene of the alleged ill-treatment (*section 3.3*).

- All allegations of police ill-treatment should be investigated by the prosecuting authorities promptly, impartially and thoroughly. In their investigations public prosecutors should pay special heed to the principles established in German law and in international human rights instruments regarding the use of force by law enforcement officials. If a criminal investigation establishes that the allegations of the complainant are credible, it should be left to a court to assess the veracity of conflicting or contradictory testimony (*sections 3.3 and 4.1*).

- The Berlin authorities should conduct an independent inquiry into all investigations carried out by the police and prosecuting authorities into the alleged ill-treatment of foreigners and members of ethnic minority groups by Berlin police officers over the last three years. The body carrying out the inquiry should be empowered to recommend whether in any of the cases it has examined criminal and/or disciplinary charges should be brought against any of the officers involved, and whether compensation should be awarded to any of the complainants. The findings of the inquiry should be made public (*section 3.3*).

- The German authorities should take effective measures to ensure that people who bring complaints of ill-treatment against police officers are protected against intimidation. Such measures should include the careful scrutiny by the prosecuting authorities of police complaints that detainees have resisted state authority, particularly those which are filed only after complaints of police ill-treatment are brought. Where complaints are filed simultaneously by a detainee alleging police ill-treatment and by police officers alleging resistance to state authority, the complaint against the victim should be suspended until the result of the investigation into the behaviour of the police officers concerned has been completed (*section 3.5*).

The role and responsibility of the police

- The federal and *Länder* police authorities should carry out a full review of their service instructions and training programs to ensure that they are consistent with the obligations laid down by the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Code of Conduct for Law Enforcement Officials (*section 4.1*).

- Full, impartial and effective disciplinary investigations should be conducted into all complaints of police ill-treatment where there is prima facie evidence that police officers have ill-treated detainees in their custody. Such disciplinary investigations should not be bound by the findings of any criminal investigation. They should examine all aspects concerning the treatment of the detainee in question, including allegations that detainees have been subjected to excessive force or deliberate ill-treatment or have been denied rights guaranteed in international treaties to which Germany is a party or in German law. Officers found to have infringed legal provisions, service instructions or internal police regulations on the treatment of detainees should be subject to disciplinary sanctions (*section 4.2*).

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- Law enforcement officers against whom repeated complaints of ill-treatment are filed should be transferred, without prejudice, to duties not directly related to arresting, guarding or interrogating detainees. Officers charged with an offence involving the commission of torture or ill-treatment should be immediately and automatically suspended from such duties pending the court's decision (*section 4.2*).
- Police training policies and programs should be reviewed in order to ensure that education in the international norms and standards of human rights, particularly standards on the prohibition of torture and ill-treatment without distinction of any kind, including race, colour, language and religion, are adequately and clearly represented (*section 4.3*).