

£FEDERAL REPUBLIC OF GERMANY

@A summary of concerns in the period May - October 1994

The alleged torture and ill-treatment of detainees by police officers

In the period under study a number of fresh allegations were received that police officers had subjected detainees in their custody to torture or cruel, inhuman or degrading treatment or had not responded adequately to racially motivated assaults. The majority of the victims were foreigners, including asylum-seekers, or members of ethnic minorities.

During the same period decisions were reached by prosecuting and judicial authorities on a number of other cases of alleged police ill-treatment or failure to prevent racist attacks. These allegations had previously been raised by Amnesty International with the German authorities. In four separate cases charges were brought against individual officers; in one of these cases officers were convicted of ill-treatment, subject to appeal.

Berlin and Brandenburg

In May 1994 Amnesty International received allegations that **Bülent Demir**, a 17-year-old German citizen of Turkish origin, was ill-treated by Berlin police on 4 April 1994. In a criminal complaint submitted to the Berlin police authorities, Bülent Demir alleges that he was punched in the kidneys and face after he had given himself up to two police officers who had caught him spraying the wall of a house with paint. He also alleges that one of the officers kicked him in the head, causing his face to hit the ground with such force that two of his front teeth broke. During the assault on him the officers also shouted verbal insults.

Bülent Demir states that when one of the officers saw from a membership card in his wallet that he belonged to a local sports centre and bodybuilding club he demanded to know why Bülent Demir had not "given him a fight". Before he was allowed to go home, Bülent Demir was handed a form about causing criminal damage to property and told he would also face an investigation for resisting police authority. Medical certificates show that Bülent

¹ Since unification in October 1990 the Federal Republic of Germany is composed of 16 federal states or *Länder*: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine/Westphalia, Rheinland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, Thuringia. Each *Land* has its own elected parliament and its own government. The Minister of Justice in each *Land* government is responsible for the prosecuting authorities and the Minister of Internal Affairs for the police.

Demir had suffered bruises, abrasions, two broken teeth and a broken finger which required surgery.

In June Amnesty International sought information from the German authorities about the outcome of the complaint of ill-treatment lodged by Bülent Demir and of the counter-complaint made against him for resisting police authority. By the end of October 1994 the organization had received no reply to its request.

In August 1994 Amnesty International received a number of reports that police officers in the federal states of Berlin and Brandenburg had, over a period of more than a year, subjected Vietnamese detainees to torture or cruel, inhuman or degrading treatment. The detainees in question, the majority of them asylum-seekers, allege that they were assaulted by officers on the streets, in police cars and at police stations. A typical case is that of **Nguyen T.**²

In an interview with Amnesty International, Nguyen T., an asylum-seeker, alleges that in June 1994 he and his wife were stopped by police officers near *Vinetastraße* underground station in the east Berlin district of Pankow. Nguyen T. states that he had in his possession one carton of cigarettes. This he handed immediately to the officer, anticipating that this was the reason he had been stopped.³ 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. At one point, the officer who had assaulted Nguyen T. 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 continued to hit him during the journey to a nearby police station.

Nguyen T. alleges 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

² The detainee's full name has been withheld by Amnesty International at his own request.

³ A flourishing and highly visible trade in black market cigarettes exists in Berlin. Many of the sellers are Vietnamese.

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 of the bone under his left eye. When interviewed by Amnesty International in August Nguyen T. was still experiencing a sharp pain in his head, impaired vision and dizzy spells. Nguyen T. has made a statement to the Berlin police about his ill-treatment.

In September 1994 Amnesty International wrote to the authorities of Berlin and Brandenburg requesting information on the steps they had taken to investigate the alleged ill-treatment of Vietnamese detainees. In October 1994 the Ministry of Justice of Berlin informed Amnesty International that criminal investigations had been launched into a total of 53 cases of alleged police abuses against Vietnamese detainees. In 12 of these cases the investigations had already been discontinued due to lack of evidence; in a further two cases charges had been brought against officers. (Although it is not made clear in the ministry's reply, it is believed that over half of the 53 cases under investigation concern ill-treatment by police officers. In the remaining cases the focus of the investigations is on allegations that officers have obtained money and cigarettes from detainees by extortion.)

By the end of October no substantive reply to Amnesty International's letter to the Brandenburg authorities had been received. Criminal investigations were reported to be in progress, however, and a number of officers to have been suspended from duty.

The case of Habib J.: An update⁴

In September 1994 the trial took place in Berlin of four officers accused of ill-treating Habib J. The 32-year-old Iranian student was the victim of a violent assault by a bus driver in the Moabit district of Berlin in December 1992. Police officers called to the scene of the incident refused to listen to Habib J., however, and instead, according to one witness, threw the victim into a police van "like a piece of meat". Habib J. also alleged that officers racially abused him and hit him in the face at the police station he was taken to. Medical certificates showed that he had suffered impaired vision and bruising to the face.

Three of the four accused officers were found guilty of causing bodily harm to Habib J. and given substantial fines. They have appealed against their convictions. A fourth officer was acquitted.

⁴ See *Federal Republic of Germany: The alleged ill-treatment of foreigners - a summary of recent concerns*, AI Index: EUR 23/03/93, June 1993.

The case of Amadeu Antonio Kiowa: An update⁵

In May 1994 Frankfurt an der Oder⁶ Regional Court ruled that three officers charged with failing to intervene in a racist attack on Amadeu Antonio Kiowa could not be tried due to lack of evidence. Amadeu Antonio Kiowa, a 28-year-old Angolan immigrant worker, was kicked and beaten unconscious by a gang of right-wing extremists on the night of 25 November 1990 in Eberswalde, a town 45 kilometres north-east of Berlin. He died 11 days later as a result of the injuries he had sustained. Allegations that police officers trailing the gang had failed to come to Amadeu Antonio Kiowa's assistance when he was assaulted were first made in July 1991 and repeated in court during the trial of his attackers in July 1992. An appeal has been lodged against the decision of the Frankfurt an der Oder Regional Court.

The case of Abdulkerim Balikci: An update⁷

In August 1994 Amnesty International was informed by the Berlin prosecuting authorities that the criminal investigation into Abdulkerim Balikci's allegations that he was ill-treated by police officers in August 1993 had been discontinued due to lack of evidence. An appeal against this decision by Abdulkerim Balikci was rejected in October 1994. Abdulkerim Balikci has applied for a judicial review of the prosecuting authorities' decision not to bring charges against the officers concerned.

Hamburg

In September Amnesty International received reports that people attending a demonstration in central Hamburg on 30 May 1994 were ill-treated by Hamburg police officers. In one case, that of journalist **Oliver Neß**, the alleged ill-treatment amounted to torture.

Oliver Neß, who was attending the demonstration⁸ in a professional capacity, alleges that he was the victim of a deliberate assault by police officers who punched him in the face

⁵ See *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, February 1994.

⁶ Frankfurt an der Oder is a town in the *Land* of Brandenburg

⁷ See *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, February 1994.

⁸ Demonstrators were protesting against the presence at a political rally of Jörg Haider, the controversial leader of the Austrian Freedom Party (*Freiheitliche Partei Österreichs*).

and hit him repeatedly in the kidneys, pelvis and chest with their batons. In an interview with Amnesty International the journalist also described how he was pinned to the ground by two police officers while a third officer took hold of his foot, removed the shoe and, deliberately and violently rotated his foot at the ankle, causing his ligaments to tear. Medical certificates show that in addition to this injury Oliver Neß suffered multiple bruising and abrasions to the whole of his body and to his limbs.

Both Oliver Neß and a friend who witnessed the assault on him categorically state that at no time did the journalist offer any resistance to any of the officers involved. Television footage, which Amnesty International has seen, shows the journalist being attacked from behind, thrown to the ground and held there by several officers. At one stage it is apparent from his physical movements that he is in extreme pain.

Oliver Neß alleges that shortly before he was assaulted, a man dressed in civilian clothing had warned him "Watch yourself today!". The journalist, who has reported many times on the alleged ill-treatment of detainees by Hamburg police officers⁹, believes that the man in question was a police officer. Oliver Neß has made a criminal complaint about the assault on him. This is currently the subject of a criminal investigation by the Hamburg authorities.

In another criminal complaint lodged with the Hamburg prosecuting authorities in August 1994, several participants at the same demonstration allege that officers sprayed irritant gas directly into their eyes from close range. Another participant alleges that he was kicked by officers when on the ground, while in a separate incident witnesses report seeing two uniformed officers violently strike a man's head against a glass door.

In September 1994 Amnesty International addressed to the Hamburg authorities its concerns about the alleged assault on Oliver Neß and the alleged ill-treatment of other participants at the demonstration. In October the organization was informed that the allegations were the subject of investigations by the Hamburg prosecuting and police authorities, from whom Amnesty International would receive further information.

In September 1994 it was reported that in a separate development the Minister of Internal Affairs had resigned from office following allegations that police officers at a Hamburg police station had ill-treated foreigners in their custody. A total of 27 officers were temporarily suspended from their duties and an investigation launched into the allegations.

⁹ These allegations were also the subject of a report by Amnesty International in January 1994 (see: *Federal Republic of Germany: Police ill-treatment of detainees in Hamburg*, AI Index: EUR 23/01/94).

The ill-treatment of detainees by members of the E-Schicht: An update¹⁰

In June 1994 the Hamburg prosecuting authorities charged three police officers with causing serious bodily harm to Frank Fennel. Frank Fennel was badly beaten by members of a special police unit (the *E-Schicht*) based at police station 16 in July 1991. As a result of his injuries, which included concussion, multiple bruising and abrasions, and a bruised kidney, he was hospitalized for a week. Frank Fennel was subsequently awarded compensation by a Hamburg civil court which ruled that the detainee had been "badly and systematically beaten" by officers who had "taken the law into their own hands". The Hamburg prosecuting authorities had repeatedly failed to bring charges against officers of the *E-Schicht* in Frank Fennel's case, just as they had in 31 other cases in which the same group of officers were alleged to have ill-treated people in their custody.

In September 1994 a Hamburg court ruled that there was insufficient evidence to open trial proceedings against the three officers charged with ill-treating Frank Fennel. The Hamburg Ministry of Justice instructed the prosecuting authorities to appeal against this decision on the grounds that the court had failed to take into account the detailed findings of the civil court which had awarded Frank Fennel compensation.

Saxony-Anhalt

During the period under review Amnesty International received a number of reports that police officers in Magdeburg had failed to offer foreigners adequate protection against violent assault and in some cases themselves subjected foreigners to ill-treatment on 12 May 1994. On that day the centre of Magdeburg was the scene of anti-foreigner riots and of violent clashes between German youths, foreigners and the police. The troubles had begun in the afternoon when a large group of drunken youths chased five black Africans through the centre of the city. Violent clashes continued into the evening.

One alleged victim of police ill-treatment was **Yusef Barzan**, an Iraqi Kurd currently seeking asylum in the Federal Republic of Germany. In an interview with Amnesty International, Yusef Barzan described how he was attacked by a group of youths wielding baseball bats, and chased through the centre of Magdeburg on the afternoon of 12 May. When he saw several police officers the asylum-seeker thought he was safe. However, instead of offering him assistance, one of the officers threw him to the ground, struck him with his baton and kicked him in the testicles. 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 the detainee was made to undress and placed in a cell. Later that night he was transferred to another station where he shared a cell with approximately 15 other detainees. He was released at approximately 5am the next day.

¹⁰ See *Federal Republic of Germany: Police ill-treatment of detainees in Hamburg*, AI Index: EUR 23/01/94, January 1994.

Yusef Barzan states that he did not consult a doctor 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.

Also in May Amnesty International received information about the alleged failure of Saxony-Anhalt police officers to act when **a black African** was assaulted by a group of right-wing extremists in Halle on 23 May 1994. According to a number of newspaper reports of the incident, witnesses pointed out several of the attackers to police officers who had arrived at the scene of the assault. The officers, however, took no action to apprehend the alleged attackers.

During the period under review Amnesty International also received reports that the prosecuting authorities in Magdeburg had failed to investigate promptly a racist attack on four Turks in September 1991. **Hasan Cagla, Ali Cimen, Naci Cimen and Hüseyin Cagla** were attacked by a group of skinheads in the early hours of the morning of 1 September 1991. Hasan Cagla suffered serious burns after a flare was fired at him by one of the skinheads. According to reports, several of the attackers were quickly identified by the police and some of them promptly confessed to the part they played in the attack. However, it was not until over two years later, in October 1993, that charges were finally brought against them.

In June 1994 Amnesty International called upon the Saxony-Anhalt authorities to conduct a thorough investigation into all aspects of the Magdeburg police's handling of the events of 12 May, and for the results of the investigation to be made public. The organization also asked for information about the criminal investigations or disciplinary inquiries launched into the alleged ill-treatment of Yusef Barzan on 12 May in Magdeburg and the alleged failure of police to act following an assault on a black African in Halle on 23 May. Finally, Amnesty International asked the Saxony-Anhalt authorities why the investigation into the racist attack on four Turks in September 1991 had been subjected to such long delays and when the trial of those charged was expected to commence.

In July 1994 Amnesty International was informed by the Ministry of Internal Affairs of Saxony-Anhalt that the events of the 12 and 23 May were the subject of extensive criminal investigations. As these were still in progress, no further details could be given to the organization. In its letter the ministry expressed its regret that the investigation into the racist attack which occurred in September 1991 had not proceeded more quickly. The delay that had occurred was, the ministry said, the result of "personnel and organizational difficulties" resulting from the judicial reforms which had been necessary following German unification.

Updates to other cases previously documented

The alleged ill-treatment of residents of Gränitz refugee hostel¹¹

In September 1994 Amnesty International was informed by the Ministry of Justice of Saxony that the investigation into the alleged ill-treatment by police officers of residents of Gränitz refugee hostel had been closed. No charges had been brought against any of the officers concerned. A number of residents had alleged that they had been punched, kicked and hit with batons during a police raid on their hostel in June 1992. Their allegations were supported by witness statements and photographic evidence.

According to a press statement issued by the Chemnitz Public Procurator's Office, the investigation into the allegations of ill-treatment had been extensive and had concluded that the use of batons by police officers had been lawful. Other specific allegations of ill-treatment had not been proven. The press statement concluded by justifying the police raid on the grounds of suspected criminal activities on the part of hostel residents. The raid itself took place in the early hours of the morning and was carried out by police in special combat gear. Many of the residents, none of whom were charged with any criminal offences, had thought at the time that they were being attacked by neo-Nazis.

The racist attacks on a hostel for asylum-seekers in Rostock¹²

During the period under study Amnesty International learned that in March 1994 the Rostock prosecuting authorities had brought charges against two senior police officers in connection with the racist attacks on an asylum hostel in Rostock-Lichtenhagen in August 1992. After clearing the residents out of the asylum hostel the police had withdrawn their forces for over an hour, leaving over 100 Vietnamese workers housed next to the hostel unprotected. During their absence rioters set fire to the building, forcing the Vietnamese residents to escape onto the roof of the building. Amnesty International had previously expressed its concern to the German authorities that police officials had failed in their duty to offer the fullest protection to the Vietnamese workers.

According to the German Code of Criminal Procedure it is now up to the German courts to decide whether there is sufficient evidence to begin trial proceedings against the two

¹¹ See Federal Republic of Germany: *The alleged ill-treatment of foreigners - a summary of recent concerns*, AI Index: EUR 23/03/93, June 1993.

¹² Ibid

officers, both of whom have been charged with "arson through negligence". By the end of October it was still not clear whether the two officers would stand trial.

The alleged ill-treatment of foreigners by Bremen police officers¹³

During the period under review Amnesty International learned that in February 1994 the Bremen prosecuting authorities had rejected an appeal from Mehmet S. against an earlier decision not to bring charges against police officers alleged to have ill-treated him. Mehmet S., a 14-year-old Turkish Kurd, had alleged that in an incident in March 1992 police officers had thrown him roughly to the ground and had bent his arms backwards. He later underwent an operation on a fracture to his arm. In its decision to reject the appeal, the Bremen Public Procurator's Office stated that medical experts had been unable to clarify how the injury had occurred.

In May 1994 Amnesty International was informed by the Bremen authorities that no charges were to be brought against officers accused of ill-treating black African asylum-seekers at the Hoyaer Straße police station in Peterswerder, Bremen in 1992. A number of detainees had alleged that officers had hit them with batons, punched and kicked them and in some cases subjected them to electric shocks using a form of "gun". According to the authorities, "extensive and lengthy investigations" had not revealed sufficient evidence to support the allegations.

Deaths in custody

During the period under review Amnesty International expressed its concern to the German authorities about two separate cases in which detainees died while in police custody. In a third case in which Amnesty International had previously expressed concern about the death of a prisoner, four prison officers were convicted, subject to appeal, of causing bodily harm through negligence, and of failing to render assistance to the prisoner concerned.

The case of Halim Dener

In July 1994 Amnesty International expressed concern to the Minister of Justice of Lower Saxony about the shooting of Halim Dener in Hanover on the night of 30 June 1994. According to reports, Halim Dener, a 16-year-old Turkish Kurd who had applied for asylum in the Federal Republic of Germany, had been putting up posters for the ERNK, the popular front of the banned Kurdistan Workers' Party (PKK), when he was apprehended by

¹³ See Amnesty International Concerns in Europe: May-October 1992, AI Index: EUR 01/04/92, December 1992).

a plainclothes police officer. Halim Dener, who was not armed, was shot in the back by the officer and died later in hospital of internal bleeding.

In the immediate aftermath of the shooting contradictory statements were made about the circumstances in which the fatal shot was fired. While police representatives spoke of an accidental shooting caused by the officer responsible stumbling with his gun in his hand, eye-witnesses were reported to have seen the officer deliberately aim his gun at Halim Dener.

In its letter to the Lower Saxony authorities Amnesty International stated that it was not in a position to assess the veracity of the conflicting statements that had been made about the incident. The organization urged, however, that the investigation that had been launched into the circumstances into Halim Dener's death be as full as possible and that the results of it be made public. Amnesty International also referred in its letter to various international standards regarding the use of force and the deprivation of life, in particular, Article 2 (2) of the European Convention on Human Rights which cites circumstances of "absolute necessity" as the only justification for the deprivation of human life.

In September 1994 the Minister of Justice of Lower Saxony informed Amnesty International that an extensive investigation into the death of Halim Dener was in progress. For that reason it was not possible to comment in detail on the case.

The case of Kola Bankole

In September 1994 Amnesty International expressed concern to the Federal Minister of the Interior about the death of Kola Bankole on 30 August 1994 following an attempt by the Federal Border Police to deport him from the Federal Republic of Germany.

According to reports, Kola Bankole was transported by police officers from Zweibrücken prison to Frankfurt am Main airport, where he was handed over to the Federal Border Police. Four officers and a doctor accompanied Kola Bankole on board the aircraft which was to return him to Nigeria. It was reported that Kola Bankole, whose application for asylum was rejected by the Federal Asylum Office in December 1990, physically resisted the attempts to deport him. As a result of this resistance, the doctor accompanying him on board the aircraft injected him with a sedative at 2pm. Kola Bankole died 25 minutes later before he could be helped by another emergency doctor who had been summoned.

In its letter to the Federal Minister of the Interior Amnesty International welcomed the fact that an investigation into the death of Kola Bankole had been launched by the Frankfurt am Main Public Prosecutor's Office. The organization urged that the investigation

examine not only the full circumstances surrounding the death of Kola Bankole, but also wider questions concerning the role of medical personnel in cases of forcible deportation. In this connection Amnesty International drew the Federal Minister's attention to Principle 5 of the UN Principles of Medical Ethics (adopted by the United Nations General Assembly on 18 December 1982) which states that:

"It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with *purely medical criteria* [Amnesty International's italics] as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health."

Amnesty International also urged that the results of the investigation into the death of Kola Bankole be published in full. No reply to Amnesty International's letter had been received by the end of October.

The case of Ibrahim Bayraktar: An update

During the period under review Amnesty International learned that in March 1994 four members of staff of Stadelheim prison in Munich were found guilty, subject to appeal, of causing bodily harm to Ibrahim Bayraktar through negligence and of failing to render him assistance. The prison doctor and one other member of staff were given suspended prison sentences, the other two were fined.

Ibrahim Bayraktar died in hospital on 31 August 1989 following acute kidney failure, the exact cause of which was disputed by medical experts. On 29 July 1989 he had become involved in a fight with prison guards during his transfer to a segregation cell in Stadelheim prison in Munich. During the fight several rounds of tear gas were fired, some by the prisoner himself on the way to the segregation cell after he had managed to snatch an officer's pistol, and some by prison officers directly into the cell itself. The prison officers locked the prisoner in the gas-filled cell, and left him there. For several days he received no medical treatment to a serious burn injury to his chest or to self-inflicted injuries to his body and face. Amnesty International had previously expressed concern to the Bavarian authorities about the death of Ibrahim Bayraktar and about the length of time it had taken to complete the investigation into his death.

¹⁴ See Federal Republic of Germany: *The alleged ill-treatment of foreigners - a summary of recent concerns*, AI Index: EUR 23/03/93, June 1993.