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GERMANY: THE ALLEGED ILL-TREATMENT OF HOMAYOUN GHALEH (Dortmund, North-Rhine/Westphalia)

Homayoun Ghaleh alleges that he was ill-treated by Dortmund police officers on the evening of 29 July 1997. In a criminal complaint to the Dortmund authorities and in a statement he later made to Amnesty International, Homayoun Ghaleh states that at about 7pm on the evening in question he observed a police car draw up in front of a pizzeria in central Dortmund and saw two officers get out and go over to a parked vehicle in which two of his cousins and a third youth were sitting, listening to music. Aware that only one of the youths could speak German, Homayoun Ghaleh, an Iranian, went over to interpret as the officers carried out an apparent identity check. According to Homayoun Ghaleh, who has been granted refugee status by the German authorities, the officers had insisted that the youths speak German to them. When he pointed out that not all of them could, the officers pushed him. Homayoun Ghaleh states that he told the officer not to touch him, and that the officer responded by hitting him on the head with his service radio. He then fell to the floor where the officer who had hit him allegedly proceeded to bang his head on the ground, screaming "I'll kill you!" ("Ich bring' Dich um!"). According to Homayoun Ghaleh, at this point the second officer asked his colleague "Why are you still hitting him?" ("Warum schlägst Du ihn noch?"). More officers arrived and Homayoun Ghaleh was taken to a nearby police station where his identification was checked. He was then released and went straight to hospital for medical treatment. The next day he visited a doctor. According to a certificate issued by the latter, Homayoun Ghaleh had suffered bruising of the forehead, cheekbone, right wrist and chest, accompanied by swelling and pain;

abrasions of the head; and bruising to the crown of the head (*“Prellmarke re. Stirn, re. Jochbein, re. Handgelenk und in mittlerer BWS mit Schwellungen und Schmerzen; Kopfhautabschürfungen und Prellmarke am Scheitel”*).

Homayoun Ghaleh states that at no time did he show any resistance to the officers who arrested him. His claim is supported by a witness quoted in an article in the *Westfälische Rundschau* on 2 August 1997. According to this witness, Homayoun Ghaleh had “wanted to clarify something, but [the officers] didn’t let him...he really didn’t do anything” (*“[Er] wollte was klarstellen, aber man ließ ihn nicht...Er hat wirklich nichts gemacht”*). A police spokesperson contacted by the newspaper confirmed only that the officers involved had themselves issued a complaint against Homayoun Ghaleh for resisting their authority (*“Widerstand”*) and for assault (*“Körperverletzung”*).

In December 1997 Amnesty International called upon the German authorities to carry out prompt and impartial criminal and disciplinary investigations into Homayoun

Ghaleh’s allegations of ill-treatment. In the same month the organization was informed by the Interior Ministry of North-Rhine/Westphalia that the youths had been asked to identify themselves because they were suspected of involvement in criminal acts, including leaving the scene of an accident. When they started to speak to each other in a foreign language the officers told the youths to stop, fearing that they could be planning to flee. According to the ministry, Homayoun Ghaleh kept on interrupting the officers and was ordered to the other side of the street. When he refused to go the officer took his arm. In the course of the ensuing physical confrontation both Homayoun Ghaleh and the officer were “slightly injured” (*“leicht verletzt”*). The ministry concluded its letter to Amnesty International by assuring the organization that the investigations that had been opened into the incident would be thorough, and that any officer found to have committed criminal or disciplinary offences would be punished.

Amnesty International’s concern

For several years AI has been receiving allegations that German police officers have used excessive or unwarranted force in restraining or arresting people, or have deliberately subjected detainees in their

custody to cruel, inhuman or degrading treatment or punishment. The vast majority of the victims of ill-treatment have been foreign citizens, including asylum-seekers, or members of ethnic minorities. In many instances the alleged ill-treatment appears to have been racially motivated. Amnesty International published a 60-page document in May 1995 (*Federal Republic of Germany: Failed by the system - police ill-treatment of foreigners*, AI Index: EUR 23/06/95) and a 43-page report in July 1997 (*Federal Republic of Germany: Continuing pattern of police ill-treatment*, AI Index: EUR 23/04/97) summarizing the organization's concerns. In these reports Amnesty International concludes that cases of alleged police ill-treatment are not isolated incidents but amount to a clear pattern of abuse. Although criminal investigations have been opened into all the allegations of ill-treatment reported to it, many of the officers allegedly responsible have escaped prosecution.

The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment 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, 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). 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. International human rights instruments also establish clear principles regarding the use of force by law enforcement officials. These include Principle 4 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which stipulates that: "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 Principle 5 which states that: "Whenever the lawful use of force...is unavoidable, law enforcement officials shall...exercise restraint in such use and...[shall] minimize damage and injury". These principles are reflected in section 2 (1) of the North-Rhine Westphalian Police Law ("*Polizeigesetz*") which stipulates 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" ("*Von mehreren möglichen und geeigneten Maßnahmen hat die Polizei diejenige zu treffen, die den einzelnen und die Allgemeinheit voraussichtlich am wenigsten beeinträchtigt*").

The Federal Republic of Germany is composed of 16 federal states or *Länder*. Each *Land* has its own elected parliament and government. The Minister of Justice in each *Land* government is responsible for the prosecuting authorities, whose duty it is to investigate criminal complaints, and the Minister of the Interior for the police. Dortmund is in the *Land* of North-Rhine/Westphalia.