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GERMANY: THE ALLEGED ILL-TREATMENT OF ÖZGÜR AND MEHMET K.

Brothers Özgür K. (21 years old) and Mehmet K. (15 years old) allege that they were ill-treated by police officers in Markdorf asylum hostel, near Lake Constance, in the Land of Baden-Württemberg. The two brothers, both Kurdish asylum-seekers from Turkey, told local journalists that they were in their room on the evening of Monday 20 October 1997, Özgür watching television and his brother sitting on a couch doing his homework, when suddenly four or five plainclothes police officers burst into their room and pulled them both to the ground. As Özgür tried to turn around towards his brother, one of the officers allegedly kicked him in the face. According to a medical certificate, Özgür suffered a cut to the upper eyelid, bruising of the left cheekbone and right ear (*Platzwunde re. Oberlid, Jochbeinprellung li. mit Hämatom, Ohrenprellung re.*). Mehmet has also reportedly told investigators that he received a punch in the face before being pulled to the ground. Both brothers were allegedly held on the ground for approximately half an hour and Özgür was handcuffed. According to newspaper reports, they were not told what was happening and neither brother resisted. The handcuffs were then taken off Özgür and he was taken to hospital, where his cut was stitched up. Mehmet was also injured as a result of the police officers' actions and was taken by friends to the same hospital where he was treated

for a bruise and an abrasion of the left cheekbone (*Jochbeinprellung li. mit Schürfwunde*).

On the day following the incident, the prosecuting authorities and police stated in a press release that three Algerians had been arrested near Markdorf asylum hostel on suspicion of dealing drugs. The police had searched the room of the arrested men and had been informed that drug dealing was going on in another room in the hostel. The officers proceeded to storm the room occupied by Özgür and Mehmet K., "in order to prevent acts of resistance, the loss of evidence and the escape of the people resident in the room" (*"um Widerstandshandlungen, den Verlust von Beweismitteln und die Flucht der darin aufhältlichen Personen zu verhindern"*). In a letter to the brothers from Friedrichshafen police (dated 23 October 1997), a senior police officer confirmed that an investigation had been launched into the incident and expressed sincere regret that the brothers had become involved and had been injured. The head of Friedrichshafen police told journalists that there were was no evidence that any officer had deliberately kicked either of the asylum-seekers.

In February 1998 Amnesty International called upon the German authorities to ensure that the investigation launched into the allegations of ill-treatment against Özgür and Mehmet K. was carried out promptly and impartially.

Amnesty International's information on this case is based on articles published in the local newspapers *Schwäbische Zeitung* (22 October 1997) and *Südkurier* (22 and 24 October 1997); medical certificates issued by St Josef Hospital on 20 October 1997; a letter to Özgür and Mehmet K. from the head of Friedrichshafen criminal police, dated 23 October 1997 and an interview with a refugee worker.

Amnesty International's concern

For several years Amnesty International 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 5 (1) of the Police Law ("*Polizeigesetz*") of Baden Württemberg 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" ("*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. Markdorf is in the *Land* of Baden-Württemberg.