

£FEDERAL REPUBLIC OF GERMANY

@Police ill-treatment of detainees in Hamburg

Background

In October 1993 Amnesty International learned that no charges or disciplinary proceedings were to be brought against any of the officers who ill-treated Lutz Priebe and Frank Fennel in two separate incidents in August 1989 and July 1991 respectively (see *Amnesty International Concerns in Europe: November 1992 - April 1993*, AI Index: EUR 01/01/93). Amnesty International had urged the Hamburg authorities to re-examine both cases following the award of compensation to the victims by Hamburg Regional Court (*Landgericht Hamburg*) in February 1993. Criminal complaints by the two men had previously been rejected by the Hamburg prosecuting authorities¹.

Both Lutz Priebe and Frank Fennel had alleged ill-treatment by officers belonging to a special police unit called the *E-Schicht*². The *E-Schicht* was set up by the Hamburg authorities in November 1988 in order to boost police numbers in the fight against crime and "politically-motivated violence"³ in the St Pauli, Schanzenviertel, Altona and St Georg districts of the city. These areas have been the scene of frequent, sometimes violent, clashes between the police and demonstrators protesting largely about the "gentrification" of parts of the city. About 60 plainclothes officers belonging to the new unit were attached to police stations 11, 15, 16 and 21 in these same four areas of the city.

¹ See section entitled *The investigation of complaints* for a brief outline of the complaints procedure.

² E = *Einsatz* or deployment, *Schicht* = section or (work) shift.

³ radio interview with Werner Hackmann, Minister of Internal Affairs in Hamburg, NDR 1, *Hamburg-Welle aktuell*, 18 September 1992.

Since its inception, the *E-Schicht*, and particularly that section of it based at station 16, has been the subject of numerous allegations of ill-treatment. According to information provided in June by the Ministry of Internal Affairs (*Behörde für Inneres*) at Amnesty International's request, 32 complaints of ill-treatment were made against officers from the *E-Schicht* based at station 16 during the period 1 March 1989 - 28 February 1993⁴. These 32 cases include those of Lutz Priebe and Frank Fennel.

The case of Lutz Priebe

On the evening of 20 August 1989 a group of people had gathered outside station 16 to await the release of four demonstrators arrested earlier that day. One of the group, Lutz Priebe, was dragged into the station following a clash with two police officers. In a criminal complaint lodged on 29 August 1989, Lutz Priebe alleged that as he was being taken through the station and into a side room he was struck in the face by an officer. He further alleged that once in the room he was placed on a stool with his arms pushed up high behind his back and his wrists handcuffed, so that he was forced to lean forwards with his head over a counter. According to the detainee, one of the officers in the room then grabbed his hair and banged his head down hard against the counter, sometimes hitting it against the edge. Several officers then beat him on the body with their fists. He was also struck several times on the back with what he assumed was a baton. Lutz Priebe's ill-treatment was witnessed by several people through a window of the police station and through the doorway of the room he was detained in. The same witnesses also heard him cry out in pain. According to medical evidence Lutz Priebe's injuries included a broken nose, multiple bruising, a cut lip and a sprained right shoulder.

In March 1990 Lutz Priebe was informed by the Hamburg Public Prosecutor (*Staatsanwalt*) that "there were not adequate grounds for bringing charges" against any police officers. According to the findings of the investigation into his complaint of ill-treatment, Lutz Priebe had insulted and kicked one of the officers outside the station and had resisted arrest⁵. The Public Prosecutor found no evidence that would cast doubt on the officers' version of events, that is, that they had not hit the detainee as they took him into the station and that the injuries which he sustained in the detention room were caused when he fell over and struck his face on the arm of a chair. The testimony of those who had witnessed Lutz Priebe's ill-treatment was rejected by the Public Prosecutor on the grounds that since they had all been members of the same group, their evidence could not be regarded as impartial.

⁴ Amnesty International was informed by the Hamburg Ministry of Internal Affairs that similar statistics relating to allegations of ill-treatment by *E-Schicht* officers based at stations 11, 15 and 21 were not available.

⁵ Lutz Priebe was later tried for these offences. However, the court halted trial proceedings after he agreed to pay a financial penalty.

Lutz Priebe immediately lodged an appeal against the decision to close the investigation, but this was rejected as "unfounded" in December 1990. In presenting his reasons for rejecting the appeal, the Senior Public Procurator again criticized witness testimony, saying that it was contradictory or fabricated.

When examining Lutz Priebe's civil claim against the Hamburg police for compensation in February 1993, however, three judges from the Hamburg Regional Court took the eye-witness testimony more seriously. They even visited the police station in order to ascertain whether it was physically possible for the witnesses to have seen what they claimed they had. In its judgment the court rejected the argument that the witnesses had made up testimony in order to help "one of their own". On the contrary, it was the officers' testimony, along with their "lapses of memory", which the court found "unconvincing", particularly their suggestion that Lutz Priebe had fallen on the arm of a chair - a version of events which the court described as "scarcely imaginable". In awarding Lutz Priebe DM 2,500 damages, the Hamburg Regional Court stated that it was "firmly convinced that the complainant was hit repeatedly in the station and that his head was violently struck on the raised counter of the detention room". The court was able to identify the two officers who had held Lutz Priebe's arms behind his back in the detention room and their colleague who had admitted pushing the upper part of the detainee's body onto the counter.

Following his successful claim for damages, Lutz Priebe asked the Hamburg Public Procurator to reopen the investigation into his ill-treatment and to bring charges against the officers concerned. His request was rejected in September 1993 on the grounds that such charges would "not be likely to lead to the conviction of the officers concerned". In reaching this decision the Hamburg Public Procurator upheld the view he had expressed earlier that the solidarity which the witnesses had felt with the victim "may have led to them making deliberately false statements or at least may have caused them to wrongly interpret the actions of the police which they had observed". In October 1993 Lutz Priebe appealed against the decision by the Hamburg Public Procurator not to reopen the investigation.

The case of Frank Fennel

In the early hours of the morning of 27 July 1991 Frank Fennel, his wife Julia Vidal and a friend were enjoying a drink outside a bar. A car drew up nearby, close to where a banner left over from a demonstration was hanging across the road. Fearing that the occupants of the car were intending to destroy the banner, Julia Vidal stood up and walked towards it, followed at some distance by her husband and their friend. Frank Fennel heard a bottle smash on the ground near to the car and saw several men putting his wife into a Volkswagen bus. It was later established that the bottle had been thrown by Julia Vidal. Fearing that his wife was being abducted, Frank Fennel ran towards the bus and threw a half-empty bottle at one of the men. He immediately felt a blow from behind and fell to the ground, whereupon he was kicked in the face and body and beaten with fists and with a rubber truncheon. He was then placed into the van where, after more blows, he lost consciousness.

His wife who had been placed in the front of the van heard her husband cry out with pain as he was being beaten, but she was prevented from turning round to see what was happening.

Frank Fennel, photographed in hospital

Shortly afterwards the van arrived at a garage and Frank Fennel was dragged into station 16. Here, for the first time, he saw a uniformed police officer. He was then placed in a cell where he alleges that he was punched in the face by a man wearing civilian clothes and wearing a leather glove.

Several hours later Frank Fennel was taken to hospital where his injuries were diagnosed as: concussion; bruising of the left eye which was swollen and closed, bruising of the buttocks, back of the head, left temple, back of the neck; bruising and abrasions to the chest, the pelvis, the back, and to both arms and legs; and bruising to the kidney. As a result of his injuries Frank Fennel spent a week in hospital.

On 31 July 1991 Frank Fennel lodged a criminal complaint about his ill-treatment. Almost a year later, on 2 July 1992, his complaint was rejected by the Hamburg Senior Public Procurator (*Oberstaatsanwalt*) on the grounds that there was no evidence of ill-treatment. In rejecting the complaint the Senior Public Procurator concluded that "it cannot be ruled out that the [victim's] injuries were a result of justified police behaviour". Furthermore "the injuries which are alleged to have occurred in the station itself cannot be attributed to any one officer".

Frank Fennel appealed against the decision not to bring charges against any of the officers. His appeal was rejected by the Chief Public Procurator (*Leitender Oberstaatsanwalt*) in December 1992. In his ruling the Chief Public Procurator concluded that although claims by police officers that Frank Fennel had not been hit with a truncheon

were "clearly wrong", it could not be established in what circumstances Frank Fennel's injuries had occurred, or whether they had been unlawfully and culpably caused.

Frank Fennel himself was charged in September 1992 with resisting an officer, assaulting an officer by throwing a bottle at him (causing a cut which later required stitches), and attempting to free a prisoner. In February 1993 he was found guilty of the first two charges by a Hamburg court and given a suspended sentence of eight months' imprisonment⁶. In its ruling on the case, the court rejected Frank Fennel's assertion that he had not known that the men who had put his wife in the bus were police officers. It acknowledged, however, that he had suffered significant injuries both during and after his arrest, and took this into account when sentencing him. Frank Fennel's conviction is currently the subject of an appeal by both the prosecution and the defence.

Two days after his conviction a civil court awarded Frank Fennel DM 4,000 compensation for the injuries he had suffered at the hands of the police. In its examination of the case the Hamburg Regional Court took a different view from that of the prosecuting authorities regarding the detainee's treatment by officers, 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. The court found that one officer (whom it named) had deliberately and unnecessarily punched Frank Fennel in the face. It rejected the suggestion that the victim's injuries were the result of his attempts to resist arrest and commented 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 the driver of the police van, that "there is a suspicion that further details were not provided [by the officer] in order not to harm his colleague". The court also established that Frank Fennel was subjected to further ill-treatment in the police van and immediately upon arrival at police station 16. It was unable to find evidence, however, that he was ill-treated inside the station.

Following the decision to award Frank Fennel compensation for the ill-treatment he suffered, the Hamburg authorities re-examined the decision not to bring charges against any of the officers involved. In May 1993 the Hamburg Senior Public Procurator concluded that there was no reason to reopen the investigation into the officers' behaviour. The Senior Public Procurator stated that she did not share the view expressed by the Hamburg Regional Court that the force used in arresting Frank Fennel was unjustified or disproportionate. The court's other conclusions were found to be unconvincing. Moreover, the court had not been able to establish with the necessary degree of certainty the identity of the officers responsible.

⁶ In November 1993 damages were awarded against Frank Fennel for the injuries he caused to the officer.

The investigation of complaints

In the Federal Republic of Germany the investigation of complaints of ill-treatment⁷ is the responsibility of the Public Procurator's Office (*Staatsanwaltschaft*) attached to the Regional Courts in each of the federal states (*Land*). According to the Code of Criminal Procedure (*Strafprozeßordnung*, abbreviated as *StPO*) the Public Procurator's Office is to conduct an investigation into complaints of ill-treatment brought to its attention⁸ and to bring public charges if it believes that there are "adequate grounds" for doing so⁹. Alternatively it can reject the complaint. "Adequate grounds" exist if the accused person is "sufficiently suspected of having committed a criminal act"¹⁰, meaning that the balance of probability must be that a court would convict the person if he or she were charged and tried for the offence in question. If the complaint is rejected, the victim of ill-treatment can appeal to the Public Procurator's Office attached to the Higher Regional Court (*Oberlandesgericht*), the highest court at *Land* level¹¹. If this appeal is rejected, the complainant can apply to the Higher Regional Court for a judicial review of the Public Procurator's decision not to bring charges¹².

The cases of Lutz Priebe and Frank Fennel illustrate well the difficulties which the victims of police ill-treatment face in bringing successful criminal complaints. In rejecting Lutz Priebe's claim that he was ill-treated, the Hamburg prosecuting authorities chose not to believe the evidence of those who testified on his behalf, describing their testimony as biased, contradictory or fabricated. The testimony of police officers, on the other hand, was not found wanting, even though detailed examination by civil courts revealed serious doubts about its reliability.

Another major problem concerns that of identifying the officers involved in incidents of alleged ill-treatment. Even where it is believed that ill-treatment did occur, criminal charges cannot follow unless the prosecuting authorities can attribute specific acts of

⁷ Article 340 (1) of the German Criminal Code (*Strafgesetzbuch*) states that: "An official of the state who commits, or permits to be committed, bodily harm during the exercise of his duties or in connection therewith, shall be punishable by a term of imprisonment ranging from three months to five years. In less serious cases up to three years' imprisonment or a fine shall be imposed".

⁸ Article 160 (1) *StPO*

⁹ Article 170 (1) *StPO*

¹⁰ Article 203 *StPO*

¹¹ Article 172 (1) *StPO*

¹² Article 172 (2)-(4) *StPO*

ill-treatment to specific individual officers. Investigations frequently fail to do this, even where there are only two or three officers involved. By contrast, civil courts need only establish that an act of ill-treatment has occurred in order to award compensation to the victim - they do not need to identify the individual officers responsible. It is for this reason that victims of ill-treatment may be more successful with civil claims for compensation than with criminal complaints for police ill-treatment.

However, even when individual officers are identified as having caused specific injuries to detainees in their custody, they frequently escape prosecution because the authorities view the amount of force they have used as neither "unnecessary" nor "disproportionate". The case of Frank Fennel suggests that civil court judges have a very different understanding of the level of force deemed appropriate in order for several police officers to restrain or arrest one detainee.

Amnesty International's concerns

Amnesty International is concerned at the high number of complaints of ill-treatment lodged against officers of the *E-Schicht* based at station 16 during the period 1 March 1989 - 28 February 1993. The organization is not in a position to refute or confirm the accuracy of each individual allegation. However, the consistency and general credibility of the allegations, some of which have been the subject of rigorous examination by civil courts, lead the organization to conclude that officers belonging to the *E-Schicht* based at station 16 have used unnecessary force when arresting detainees and in some cases have subjected them to serious ill-treatment.

Amnesty International is also concerned that officers responsible for ill-treatment have consistently gone unpunished. To the organization's knowledge none of 32 complaints of ill-treatment made against *E-Schicht* officers from station 16 during the period 1 March 1989 - 28 February 1993 have resulted in criminal charges being brought against the officers concerned and no disciplinary proceedings have been brought against any of the officers involved in any of the cases.

Action by Amnesty International

Amnesty International has raised its concerns in several letters to the Hamburg Minister of Justice (*Justizsenatorin*) and to the Minister of Internal Affairs (*Innensenator*)¹³. In a reply the organization received from the Ministry of Internal Affairs in May 1993, Amnesty International was informed that officers from station 16, particularly those belonging to the *E-Schicht*, had in the past been the target of a "deliberate campaign...to discredit the, on the whole, successful work of the officers who have made an important contribution to increasing security and reducing violence in that area of the city". The Ministry regretted that in individual cases where officers had behaved wrongfully there had been insufficient evidence to charge them. It added that all criminal complaints into alleged ill-treatment by officers belonging to the *E-Schicht* and based at station 16 were being reviewed by the prosecuting authorities, in order to ascertain whether, by "viewing all the cases together, new insights or new information emerge". The civil court rulings in the cases of Lutz Priebe and Frank Fennel would also be reviewed by the prosecuting authorities in order to see whether there were grounds for reopening the investigations into the allegations of ill-treatment or for launching new inquiries. (As has already been shown above, the re-examination of the criminal complaints lodged by Lutz Priebe and Frank Fennel has not resulted in charges being brought against any of the officers involved. Amnesty International has not been informed whether the review of all the other complaints previously rejected is now complete.)

Finally the Ministry of Internal Affairs stated in its letter to Amnesty International that although no measures had been taken to discipline individual officers accused of ill-treatment, "general personnel management steps have been taken (service instruction, personnel discussions, transfers) in order to deal with the situation".

Amnesty International does not believe that such measures are sufficient to prevent cases similar to those described in this paper from occurring in the future. Furthermore, the organization is concerned that the failure of the Hamburg authorities to prosecute or discipline officers responsible for ill-treating detainees in their custody may encourage other police officers to believe that they can commit similar acts with impunity.

Amnesty International's recommendations

Amnesty International therefore calls upon the Hamburg Minister of Justice to:

¹³ The Minister of Justice is responsible for the prosecuting authorities, while the Minister of Internal Affairs is in charge of the police.

(1) Ensure that the review by the prosecuting authorities of all 32 cases in which officers belonging to the *E-Schicht* based at station 16 have been accused of ill-treatment is completed as quickly as possible.

(2) Instruct public procurators that in their examination of criminal complaints of police ill-treatment they should treat all eye-witness testimony impartially. In the event of contradictory or conflicting evidence, courts should be left to assess the veracity of different versions of events.

(3) Ensure that all public procurators are familiar with 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. According to Principle 4 of the 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". 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".

Amnesty International also calls upon the Hamburg Minister of Internal Affairs to:

(1) Conduct its own thorough review of all complaints of ill-treatment by officers of the *E-Schicht* based at station 16 with a view to initiating disciplinary proceedings against individual officers guilty of using excessive force against detainees in their custody. Amnesty International believes that such a review is particularly important in view of the fact that some officers are believed to have been the subject of repeated complaints¹⁴.

(2) Carry out a thorough re-examination of existing guidelines on the amount and type of force which police officers are permitted to use when arresting or restraining detainees, in order to ensure that these conform with international standards.

(3) Undertake a thorough reassessment of the training which officers of the *E-Schicht* undergo in order to ensure that they are familiar with techniques of restraint or arrest which require only minimum amounts of force.

¹⁴ It would appear, for example, from reading the civil court rulings in the cases of Frank Fennel and Lutz Priebe, that the same officer was responsible both for allegedly banging Lutz Priebe's head against the detention room counter and for deliberately punching Frank Fennel in the face. However, since only surnames are quoted in the rulings, this cannot be stated with certainty.