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# FEDERAL REPUBLIC OF GERMANY

## The alleged ill-treatment of foreigners - An update to the May 1995 report

### Introduction

In the period April 1995 - January 1996 Amnesty International received numerous fresh allegations that German police officers, and in some cases German prison officials, had used excessive or unwarranted force in arresting or restraining people, or had deliberately subjected detainees in their custody to cruel, inhuman or degrading treatment or punishment. In one case the injuries suffered by the victim were severe, and were allegedly inflicted deliberately and repeatedly with the intention of causing intense suffering. Amnesty International therefore believes that it is justified in referring to the alleged ill-treatment in this case as ill-treatment amounting to torture.<sup>1</sup> In the overwhelming majority of cases brought to the organization's attention, the victims were foreign nationals, including asylum-seekers or refugees, and members of ethnic minorities. *In some cases the alleged ill-treatment appeared to have been racially motivated.* Some of the allegations received by Amnesty International are documented below.

In the period under review decisions were reached by prosecuting and judicial authorities on a number of cases of alleged ill-treatment, including that of German journalist Oliver Neß. Most of these cases were described in detail by Amnesty International in its report *Federal Republic of Germany: Failed by the system - police ill-treatment of foreigners*, published in May 1995, AI Index: EUR 23/06/95 (hereafter referred to as the May report). The case of Oliver Neß was documented in *Federal Republic of Germany: A summary of concerns in the period May - October 1994*, published in November 1994, AI Index: EUR 23/08/94.

Amnesty International engaged in extensive correspondence with the German authorities about the fresh allegations it had received and about the concerns it had raised in its May 1995 report.

### Fresh allegations of cruel, inhuman or degrading treatment or punishment

#### *The case of Benjamin Safak (Frankfurt am Main, Hesse)*

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<sup>1</sup> According to Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (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".

The information on this case is based on a criminal complaint submitted by Binyamin Safak to the Frankfurt prosecuting authorities on 12 April 1995; on an interview conducted by Amnesty International with the victim; on an article in the Turkish newspaper *Hürriyet*; and on medical certificates. Binyamin Safak was born in Germany and is of Turkish nationality.

According to a criminal complaint made by Binyamin Safak, he and a companion stopped their car in front of a hot-dog stand in the centre of Frankfurt on Sunday, 10 April 1995 at approximately 8.45pm. Two officers drew up in a police vehicle and told Binyamin Safak that he could not leave his car there. When the Turk said that he only wanted to stop for a couple of minutes, one of the officers replied: "Drive off, you wog". Upset by the use of racist language, Binyamin Safak told the officers to be more polite. They in turn requested that he get out of his car. Binyamin Safak asked why, and offered the officers his driver's licence and identity card. The officers told him several more times that he should get out of his car. When Binyamin Safak did so, one of the officers violently pushed him to the ground and handcuffed his hands behind his back.

Binyamin Safak was then driven to a police station where the officers immediately took him to a cell. The detainee states that at no stage had it been made clear to him why he had been arrested. Once in the cell the officers suddenly began to assault him. According to Binyamin Safak, over the course of about an hour the two officers kicked and punched him in the face, chest, head and arms. At one stage one of the officers took him by his hair - which at the time was very long, almost reaching down to the small of his back - and flung him head first against the wall. During the course of the assault on him Binyamin Safak was unable to offer any resistance because his hands were still secured behind his back. Covered with blood, Binyamin Safak collapsed on the floor. In the meantime, his companion, who had been left in the car, had telephoned the detainee's parents who arrived at the station to ask about their son. They were told, however, that Binyamin Safak was not at the station. When they heard this, Binyamin Safak's parents said that they would contact a lawyer and the Turkish Consulate. Binyamin Safak was released a short time later and was found by his parents in the street outside the police station at approximately 9.45pm. His parents drove him straight to the family doctor.

A medical certificate from Johann Wolfgang Goethe University Clinic, where he was later treated, shows that Binyamin Safak's injuries included: a cut to his lip two centimetres long which required stitching; a bruised and swollen chin; bruises and abrasions to the temple and forehead; a bruised chest; swelling of the right wrist and right knee; a cracked rib; and a depressed fracture of the cheek bone. Binyamin Safak was hospitalized for a week. According to an article in the Turkish-language newspaper *Hürriyet*, a police spokesperson was quoted as saying that Binyamin Safak had sworn at police officers and had become aggressive. As a result of his behaviour the officers had had to make him "ineffective". Binyamin Safak is currently the subject of an investigation for resisting state authority.

In October 1995 Amnesty International wrote to the German authorities concerning the alleged assault on Binyamin Safak. In October 1995 the Hesse Ministry of Internal Affairs informed the organization that it was unable to comment on the case until the investigation by the prosecuting authorities was complete.

*The case of Azad Kahn Fegir Ahmad, Noorol Hak Hakimi and Mohammed Nabi Schafie (Leipzig, Saxony)*

The information on this case is based on statements made by Azad Kahn Fegir Ahmad, Noorol Hak Hakimi and Mohammed Nabi Schafie, by a neighbour and by the manager of the Leipzig hostel where the alleged ill-treatment occurred, as well as on newspaper reports and on medical evidence.

On Tuesday 6 June 1995 between 4 and 5am, approximately a dozen men wearing masks and black suits stormed the accommodation occupied by three Afghan asylum-seekers, Azad Kahn Fegir Ahmad, Noorol Hak Hakimi and Mohammed Nabi Schafie. The three men alleged that the armed intruders - who, it transpired, were police officers - kicked, punched and handcuffed them. Noorol Hak Hakimi stated that when he asked the intruders to show their identity cards and to explain why they had come, he was hit again. The intruders conducted a violent search of the asylum-seekers' accommodation, during which they broke several objects, including the mens' television set.

A neighbour saw the masked men break into the asylum-seekers' home, believing the intruders to be "neo-fascists". After about 40 minutes he went to look for his three neighbours and found two of them lying down and the third sitting on the floor of their accommodation. He noted that the men had blood on their faces and on other parts of their bodies.

According to a statement by the asylum hostel manager, whose flat is next door, the police only asked for his cooperation when they realised they had got the wrong accommodation. When the police showed him a photograph of the person they were looking for, he was able to point out where the man - a Moroccan - lived.

Azad Kahn Fegir Ahmad, Noorol Hak Hakimi and Mohammed Nabi Schafie alleged that after most of the officers had withdrawn from the hostel, another man wearing a suit came. This man reportedly called the asylum-seekers "terrorists" and said that they would be hit again if they did not hand over their identity papers to him. After these were handed back to them an hour later, another man dressed in plain clothes came to apologise to them, saying that the police had made a mistake.

Azad Kahn Fegir Ahmad, Noorol Hak Hakimi and Mohammed Nabi Schafie were taken to St Elisabeth hospital where they received treatment for their injuries. Mohammed Nabi Schafie, who according to medical evidence had suffered multiple bruising, was kept in hospital for two days. Noorol Hak Hakimi was not released until 11 days after the incident. A medical diagnosis made when he was admitted to the hospital records that he had suffered concussion, a bruised stomach and abrasions.

According to an article in a local paper, the *Leipziger Volkszeitung*, the head of the Leipzig criminal police, Uwe Matthias, admitted that "The [police operation] went badly wrong". He explained that the police had received a complaint the previous evening that a 21-year-old woman was being detained against her will by a Moroccan living in the asylum hostel. The Moroccan was believed to be armed and potentially dangerous. In fact the man offered no resistance to the police and they were able to establish that the woman living with him was there of her own free will.

In September 1995 Amnesty International wrote to the Saxony authorities concerning the alleged ill-treatment of Azad Kahn Fegir Ahmad, Noorol Hak Hakimi and Mohammed Nabi Schafie. In December the Saxony Justice Ministry confirmed to the organization that an investigation had been launched into the allegations. They added that in accordance with legislation on data protection, they could not meet Amnesty International's request to be informed about the outcome of the investigation.

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*The case of Hidayet Secil (Göppingen, Baden-Württemberg)*

The information on this case is based on statements made by Hidayet Secil, his daughter Sevgi Secil and son Ismail Secil, in a criminal complaint to the Ulm prosecuting authorities on 4 July 1995; on an article in the *Neue Württembergische Zeitung* of 4 July 1995; and on a medical certificate issued by a doctor on 3 July 1995. Hidayet Secil is of Turkish nationality and has been living in Germany since 1969.

On the evening of Saturday, 1 July 1995, shortly after 7pm, two police officers, one male and one female, called at the Secil family's second-floor flat in the town of Göppingen. A neighbour who lives on the ground floor of the same building had rung the local police to complain about the noise the family was making. After the officers had spoken to the neighbour, they went up to the Secil family's flat and told them to be a bit quieter. Sevgi and Hidayet Secil explained to the officers that they were fed up with the neighbour complaining about them for no good reason. The officers then left. As they were going, the neighbour who had called them was heard to say to the officers that if necessary she would call them again in 10 minutes time. Ten minutes later the Secil family heard the same officers return. A police car also arrived and a total of four officers, two male and two female came up the stairs. Sevgi Secil states that through a window in the front door of the flat she asked the officers what they wanted. She was told that they had come to take Hidayet Secil with them to Christophsbad Psychiatric Hospital and that if the door was not opened it would be kicked in. Sevgi Secil opened the door and the four officers charged in and headed for the bathroom where Sevgi Secil had indicated her father was having a wash. Sevgi Secil and her mother stood between the officers and Hidayet Secil, seeking to protect him. One of the officers reportedly pulled Sevgi Secil away by the wrist, banging her head against the door-frame. Both Sevgi Secil and her mother were thrown out of the bathroom.

In the meantime Osman Secil, Sevgi's brother, arrived and told the police that they could not take their father away for no reason. At this point the police called for reinforcements and a further four officers - one male and three female - arrived. Hidayet Secil alleges that one of the four officers who were in the small bathroom with him punched him four times in the face, causing his nose to bleed. Another struck him with his baton while the officer's three colleagues held him. Hidayet Secil cried out for help, at which point Sevgi Secil heard an officer say: "In Germany we speak German". When she herself called out to her father, who in the meantime had fainted, the officers laughed and made fun of her.

At this point Ismail Secil, who had been alerted by telephone to what had been going on, arrived home. He stated that there was blood everywhere in the bathroom and that his father's face was also covered in blood. When one officer began to handcuff Hidayet Secil's hands behind his back, Ismail Secil tried to explain that his father's right arm was disabled and that he could not bend it properly.

Hidayet Secil was subsequently taken to a police station in nearby Eislingen and later taken to a hospital in Göppingen. From here he was taken to Christophsbad Psychiatric Hospital where he remained overnight. According to a medical certificate issued by a doctor on 4 July 1995, Hidayet Secil's injuries included: a broken nose; bruising to the upper lip and upper jaw; swelling and superficial cuts to the left arm; and seven weals on his back, approximately three centimetres wide and between four and 25 centimetres long.

In an interview with the *Neue Württembergische Zeitung* newspaper, Peter Hartmann, Head of the Göppingen police, is quoted as saying: "This is, of course, an unpleasant story. However,

nothing will be swept under the carpet". He added that according to the police incident report, the officers involved had to use force against Hidayet Secil after he had offered them resistance. Two officers had suffered bruises and sprains. Hidayet Secil is currently the subject of an investigation for "resisting state authority".

Amnesty International raised the case of Hidayet Secil with the authorities in January 1996.

### *The alleged ill-treatment of black African detainees (Bremen)*

In April 1995 Amnesty International received allegations that detainees had been subjected to cruel, inhuman or degrading treatment while in police custody in Bremen. According to reports, the detainees - all of them black African asylum-seekers - were forcibly given emetics, such as Ipecac Syrup or salt water solutions or a combination of both, in order to induce them to vomit up drugs they were accused of swallowing. Some detainees alleged that when they refused to take the emetics they were verbally threatened or physically ill-treated. Others stated that while they were held in police custody they were subjected to racist abuse. Two cases are described below.

#### *The case of George B.*

Liberian asylum-seeker George B. alleges that he was arrested by two plainclothes police officers near Bremen main railway station on 23 August 1994. The officers accused him of drug dealing and took him to a police station near Domsheide square. There he was made to strip naked and subjected to an intimate body search. He was then taken to see a police doctor and given a cup of dark liquid to drink. George B. states that the liquid tasted so disgusting that he spat it out onto the floor, at which point both the doctor and one of the police officers present allegedly punched him in the face. He was then tied up with plastic tape and had a tube forced up his nose. When he physically resisted this invasive procedure by turning his head from side to side, the doctor allegedly pulled his hair violently and one of the police officers punched him in the stomach. George B. states that his nose began to bleed and that he felt faint. Nevertheless he was then made to drink another cup of the liquid, followed by a cup of salt water. This induced him to vomit for approximately half an hour, after which he was taken back to the police station and released from custody. George B. states that he repeatedly vomited during the following 24 hours and that he suffered from diarrhoea for a week. Medical examinations carried out on 25 and 26 August 1994 revealed that he had suffered an injury to the eye and that he experienced pain when pressure was applied to his neck and stomach.

#### *The case of João S.*

João S., an Angolan asylum-seeker, alleges that on 21 June 1994 he was arrested in possession of drugs. These he handed over immediately to the arresting officers, one of whom allegedly stated to him that although they knew he had not swallowed any drugs, they were going to take him to the doctor anyway. As he was being taken to a police station near Domsheide square another officer reportedly said: "I like it when you Negroes get given an emetic". At the station João S. was told

by a doctor that he had to drink something which was "good for him". When he refused, the doctor told him that if he did not drink it the police officers would "give him stress". He was made to drink two cups of brown liquid followed by one cup filled with a white substance. After vomiting he was sent home. As he was leaving the station, officers allegedly taunted him with shouts of "Negro, Negro" and made retching noises. João S. was obliged to take a taxi home, and to obtain money to pay the driver on arrival, as all his money had been taken from him at the station. He had to interrupt his journey in order to vomit. He was also suffering from severe diarrhoea, causing him to soil his trousers. Following repeated bouts of vomiting, during which he also brought up blood, he was taken to hospital by friends. There he received treatment for severe abdominal pains and was not released until three days later.

In August 1995 Amnesty International wrote to the Bremen authorities concerning the reports it had received. In its letter the organization stated that in its view the forcible administration of emetics to detainees against their will for non-medical reasons amounted to cruel, inhuman and degrading treatment. Amnesty International also said that it was concerned at allegations that detainees, including the two whose cases are described above, had been subjected to verbal threats or physical ill-treatment when they refused to comply with the efforts of police officers or doctors to administer the emetics. In addition to asking for information about the criminal investigations launched into the alleged ill-treatment of George B. and João S., Amnesty International asked a number of detailed questions concerning the legal and medical procedures used in cases where detainees were given emetics in the period January 1992 - December 1994.

In September 1995 Amnesty International was informed by the office of the Prime Minister of Bremen that the organization would receive information from the Minister of the Interior on the questions it had raised. No further reply had been received by the end of January 1996.

### *The case of Samir Z. (Büren, North-Rhine/Westphalia)*

In September 1995 Amnesty International expressed concern to the North-Rhine/Westphalia authorities about allegations that detainees in Büren Pre-expulsion Detention Centre had been subjected to methods of restraint which may have amounted to cruel, inhuman or degrading treatment or punishment.

According to information received by Amnesty International, officers in Büren Pre-expulsion Detention Centre placed Samir Z., an ethnic Albanian from Kosovo province, Federal Republic of Yugoslavia, face down in a "cooling-off" cell and tied his hands behind his back. With his legs bent at the knee, his feet were then tied together and attached by a piece of cord or rope to the bindings which secured his hands. Samir Z. alleged that he was left in this position for between one and two hours, and that he was 'hogtied' on a total of nine occasions during the time he spent in Büren Pre-expulsion Detention Centre, between 14 February and 25 July 1994. In November 1994 a Paderborn doctor made a criminal complaint about the treatment of Samir Z.

According to media reports issued in January 1995, Peter Möller, the Director of Büren Pre-expulsion Detention Centre, was quoted as saying: "This form of restraint, which I ordered at that time, is regarded by outsiders and by the detainees as torture, although from our point of view it is meant rather to protect the detainee. We therefore no longer use this type of restraint, and have not done so now for several months".



In its letter to the German authorities Amnesty International expressed concern that hogtying “could cause serious injury to the detainee concerned and may therefore amount to cruel, inhuman or degrading treatment or punishment”. In its letter, Amnesty International asked for information about the progress of the investigation into the complaint of ill-treatment and for further information on the method of restraint which, according to the Director of Büren Pre-expulsion Detention Centre, was used in that establishment until late 1994. In particular Amnesty International asked whether Samir Z. was medically examined before, during or after the period during which he was restrained and whether the method of restraint used in his case had been employed or was still employed in any other penal institutions or places of detention in North-Rhine/Westphalia. In October 1995 Amnesty International was informed by the Justice Minister of North-Rhine/Westphalia that a total of three prisoners in Büren, including Samir Z., had been restrained in the manner the organization had described. According to the Minister, however, Samir Z. was only restrained on one occasion “for a period of approximately 10 to 15 minutes” because it was feared that he might “do considerable harm to himself”. The Minister stated that “the legal requirements are that the prison doctor visit the detainee as soon as possible”. He failed, however, to confirm whether this had happened in the case of Samir Z. Nor was he able to provide any information on whether the method of restraint criticized by Amnesty International had been used in any other place of detention in North-Rhine/Westphalia. Finally, the Minister stated that he was unable to supply any information about the investigation into Samir Z.’s allegations of ill-treatment, as the investigation was still in progress. In December 1995 it was reported that the prosecuting authorities had rejected the criminal complaint brought against officials of Büren Pre-expulsion Detention Centre.

### *An update to cases documented in the May 1995 report*

#### *The case of Habib J. (see May report, pages 3-4)*

In July 1995 the Berlin Regional Court upheld an appeal by three police officers convicted in September 1994 of ill-treating Iranian student Habib J. Habib J. had alleged that police officers had thrown him roughly into a police van and had racially abused him and hit him in the face at a police station following his arrest in December 1992. Habib J. appealed against the court’s decision to acquit the officers.

#### *The case of Muhamed A. (see May report, pages 6-7)*

In October 1995 Muhamed A. was informed by the Cologne prosecuting authorities that their investigation had revealed no evidence of ill-treatment by any of the officers involved in his arrest and detention. (Muhamed A. had alleged that in October 1994 a police officer had struck his head with full force against the boot of a police car, breaking one of his front teeth. He also alleged that he was ill-treated at the police station he was taken to.)

After examining the 11½-page written decision of the prosecuting authorities not to charge any of the officers involved, Amnesty International expressed concern to the North-Rhine/Westphalia Minister of Justice that the investigation into Muhamed A.’s allegations did not appear to have been “prompt and impartial”, as required by Article 12 of the United Nations

Convention against Torture. In their decision to reject Muhamed A.'s complaint, the prosecuting authorities had ignored key medical evidence; had rejected the testimony of the victim and his friends on the grounds that they were biased; had failed to examine the victim's allegations that he was ill-treated inside the police station; and had failed to question personally the victim, the accused officers and other witnesses and to visit the scene of the alleged ill-treatment, in accordance with official guidelines for the conduct of criminal proceedings. Amnesty International called upon the Cologne prosecuting authorities to reopen immediately the investigation into Muhamed A.'s allegations of police ill-treatment and to ensure that the new investigation was prompt, thorough and impartial. A copy of Amnesty International's letter was sent to the Cologne Police President who, in a three-page press statement about the decision of the prosecuting authorities to reject Muhamed A.'s complaint, had called upon Amnesty International "for the sake of its credibility" to report on the outcome of the investigation.

### *The alleged ill-treatment of Vietnamese detainees (see May report, pages 11-15)*

In July 1995 the Berlin prosecuting authorities rejected the complaint of ill-treatment brought by Vietnamese detainees **L** and **T**. The two men had alleged that they were the victims of an assault by police officers in Pankow, east Berlin in May 1994. According to the prosecuting authorities none of the officers alleged to have participated in the assault could be identified. The complainants appealed against the decision to close the investigation.

In October 1995 a Berlin officer was found guilty of assaulting Vietnamese detainee **N**. **N** had alleged that in May 1994 the officer had punched him in the ribs in the back of a police van, while the officer's colleague sat at the front of the van filling out a form. The officer who assaulted **N** was given a suspended prison sentence of six months. The second officer was fined DM 8,400 (approximately £3,750) for failing to report the incident. Both officers have appealed against their conviction.

In May 1995 two Berlin officers were charged with assaulting **Nguyen T.** Nguyen T., an asylum-seeker, alleged that he was punched and repeatedly kicked when plainclothes police officers stopped him and his wife in the street in the east Berlin district of Pankow in June 1994. The residents of nearby flats were reportedly so alarmed by his screams that one of them called the police. Nguyen T. alleged that his ill-treatment continued in the police car which took him to a nearby police station, and at the station itself. His injuries included multiple bruising to his body and a hairline fracture of the bone under his left eye. Amnesty International has described the ill-treatment to which Nguyen T. was subjected as ill-treatment amounting to torture. In January 1996 the trial of the two officers accused of ill-treating Nguyen T. began.

In the same month a separate trial began of eight Brandenburg police officers accused of ill-treating Vietnamese detainees. One of the victims (referred to as **H** in Amnesty International's May report) alleged that officers punched and kicked him when he was arrested in June 1994.

### *The case of Yusuf B. (see May report, pages 16-17)*

In June 1995 a Magdeburg court acquitted a police officer of ill-treating Yusef B. Yusef B., an Iraqi Kurd, had alleged that the officer had struck him on the shoulder with his baton and kicked him in the testicles after he was chased through the centre of Magdeburg by a group of youths wielding baseball bats in May 1994. According to press reports, the case against the officer had not been proven beyond reasonable doubt. An appeal against the verdict was rejected.

*The alleged ill-treatment of detainees by Hamburg police officers (see May report, pages 31-33)*

In June 1995 the Hamburg Ministry of Justice announced that a total of 85 police officers were under investigation for abusing mainly foreign detainees in their custody. The alleged abuses included physical ill-treatment. A number of the officers were alleged to have known about cases of abuse but to have failed to report them. The Ministry of Justice stated that allegations that one detainee had been subjected to a mock execution had not been substantiated. (In March 1995 one police officer had alleged that he overheard colleagues 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. **Senior police officers were reportedly told about this and other police abuses in April 1994.**) In a further development in December 1995 it was reported that an investigation had been launched into allegations that a Ghanaian detainee was the victim of a mock execution in January or February 1995.

In December 1995 it was also reported that a total of five officers had been charged with causing bodily harm to foreigners in their custody. One officer was alleged to have made six black African detainees undress before placing them in a cell into which he then emptied the contents of a canister of tear gas. A second officer was accused of spraying a naked detainee with disinfectant. In the same month the trial of the second officer began. Investigations were continuing in a number of other cases.

*The case of Oliver Neß (see May report, page 50, and "Federal Republic of Germany: A summary of concerns in the period May - October 1994", published in November 1994, AI Index: E/CIR 23/08/94)*

In December 1995 a Hamburg court gave the go-ahead for trial proceedings to commence against two officers accused of ill-treating German journalist Oliver Neß. Oliver Neß alleged that the officers had hit him repeatedly in the kidneys, pelvis and chest with their batons at a demonstration he was reporting on in central Hamburg in May 1994. He also alleged that while he was pinned to the ground one of the officers had removed his right shoe and had deliberately and violently rotated his foot at the ankle, tearing the ligaments. Amnesty International has described the ill-treatment to which Oliver Neß was subjected as ill-treatment amounting to torture. The court rejected charges brought against a third officer. No charges were brought against a fourth officer who was alleged to have punched Oliver Neß in the face prior to the main assault on him.

*The case of Abdulkерim Balikei (see May report, pages 36-38)*

In June 1995 the prosecution of Abdulkerim Balikci for resisting state authority was halted after he agreed to pay fine of DM 1,000 (approximately £450). Abdulkerim Balikci had brought a complaint against the officers concerned for ill-treating him following his arrest in August 1993. The prosecuting authorities had rejected evidence that the officers used excessive force and instead charged Abdulkerim Balikci with resisting arrest. Medical certificates showed that the detainee had suffered 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. In its May report Amnesty International had criticized the Berlin authorities' failure to charge the officers involved. Abdulkerim Balikci agreed to pay the fine in order that he could finally put the events of August 1993 behind him. He exercised his right to nominate a charitable institution of his choice - Amnesty International - as beneficiary of the fine.

*The case of Bülent Demir (see May report 44-45)*

In July 1995 the Berlin prosecuting authorities concluded that there was insufficient evidence to charge two police officers with ill-treating Bülent Demir. Bülent Demir, a German citizen of Turkish origin, had alleged that the officers had assaulted him after they had caught him spraying the wall of a house with paint in April 1994. According to Bülent Demir, one officer broke his finger when handcuffing him after he had given himself up, and another officer kicked him twice, on the back of the head and ear, while he was lying on the ground, causing his head to hit the ground hard and resulting in two broken teeth. The officers involved denied that they had ill-treated Bülent Demir. They stated that the youth had tried to run away from them and had hit his face on the ground when he was caught. In October 1995 charges against Bülent Demir for resisting arrest were dropped. Also in October Bülent Demir appealed against the decision not to charge the officers he alleged ill-treated him. Bülent Demir argued that the prosecuting authorities had sought no expert medical opinion on the cause of his injuries and had not referred to the injury he suffered to his finger at all in their ruling. In the same month the prosecuting authorities rejected Bülent Demir's appeal against their decision not to charge the officers, arguing that an expert medical assessment of Bülent Demir's injuries was unlikely to shed any more light on their origin. The authorities also concluded that Bülent Demir's broken finger may have occurred when he resisted arrest. At any rate, they stated, "it does not appear possible to exclude this possibility". Bülent Demir did not request a judicial review of the prosecutor's decision, partly because the chances of success are so small (one study has shown that there is a 99.5% likelihood of a request for a judicial review being rejected), and partly because he finally wanted to put the whole incident - which occurred 18 months previously - behind him.

*The case of Mimoun T. (see May report pages 46-7)*

In March 1995 the Frankfurt prosecuting authorities rejected Mimoun T.'s allegations of ill-treatment. Mimoun T., a Moroccan, alleged that during the course of his arrest officers kicked him, struck him with a baton and banged his head against the ground. According to medical evidence he suffered multiple bruise marks to the face and to the lower limbs, two weals running down his back and suspected concussion. His ill-treatment was witnessed by his friend. The police officers involved admitted striking Mimoun T. on the back twice with a baton when he resisted arrest. They denied ill-treating him. In their decision not to charge the officers concerned, the

Frankfurt prosecuting authorities concluded that the officers were within their rights to use their batons in order to break the detainee's resistance. They also concluded that the detainee's other injuries could have occurred either when he was brought to the ground and handcuffed or when he fainted at the police station. In deciding on whose version of events was the right one - that of Mimoun T. and his friend or that of the officers, the prosecuting authorities had, they said, to give the benefit of the doubt to the officers.

## Responses from the German authorities

### *Justice Ministry authorities*

During the period under review Amnesty International received comments on its May report from a number of authorities at both national and regional level.<sup>2</sup>

In July 1995 the Federal Minister of Justice assured Amnesty International that: "The prosecuting authorities in the Federal Republic of Germany examine allegations of criminal behaviour by police officers with due care". Furthermore: "The criminal justice systems at federal and regional level are constantly endeavouring to make effective the basic and human rights of arrested and detained persons". (In its May report Amnesty International had criticised the German authorities for failing "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".) The Federal Minister of Justice also informed Amnesty International that her ministry was, "in cooperation with the *Länder*, endeavouring to examine the cases described in [Amnesty International's] report and would inform the UN Committee against Torture (CAT) and the Committee against Racial Discrimination (CERD) of the results of its research in its next periodic reports". Amnesty International's recommendations regarding the rights of arrested persons and the investigation of allegations of ill-treatment by police officers would, the Federal Minister said, be "analysed carefully".

In October 1995 Amnesty International received comments on its report from the Chairwoman of the Standing Conference of Justice Ministers. In her letter the Chairwoman stated that the recommendations addressed by Amnesty International to the *Länder* Justice Ministries - in particular the organization's recommendations that all allegations of police ill-treatment received by the police authorities should, as a matter of course, be passed immediately to the prosecuting authorities who should investigate them thoroughly and impartially, interviewing the victim, the suspected police officers and any other witnesses themselves - were important principles laid down in the Code of Criminal Procedure and in administrative regulations such as the Guidelines for the

<sup>2</sup> *Unified Germany is made up of 16 constituent regional states or Länder. These are: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North-Rhine/Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia. Each Land 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.*

Conduct of Criminal Proceedings. In November 1995 Amnesty International replied that it was aware of the principles the Chairwoman had referred to, indeed it had quoted them extensively in its report. The organization's concern remained, however, that in many cases public prosecutors had failed to adhere to them. In its letter Amnesty International also said that it would welcome the views of the Chairwoman on its extensive recommendations regarding the rights of detainees in police custody. (In its May report Amnesty International had documented numerous cases in which the victims of alleged ill-treatment had stated that while in police custody they had been denied basic rights, guaranteed in German and in international law, including the right to be informed of the reason for their arrest, the right to contact a relative from their place of detention, the right to medical assistance and the right to complain about their treatment.)

In January 1996 the Chairwoman of the Standing Conference of Justice Ministers informed Amnesty International that the organization's recommendations on the rights of prisoners "in pre-trial detention" were already realized, both in theory and in practice. This, the Chairwoman said, "should have been apparent to you from your inquiries". However, Amnesty International had not criticized the legal situation of pre-trial detainees, since in none of the cases described in its 60-page May report did the alleged ill-treatment occur in pre-trial detention. In all the cases reported to Amnesty International the detainees in question alleged that they were ill-treated during their arrest, on the way to the station or during the few hours they spent in police custody prior to being released.

### *Interior Ministry authoritizs*

In July 1995 Amnesty International's May report was strongly criticized by the Berlin Minister of Internal Affairs in a letter to the organization. The Minister stated that Amnesty International's comment in its May report that the Berlin Ministry of Internal Affairs was the only one in Germany that had consistently failed to respond to our organization's letters of concern was "demonstrably wrong" and "brings into question the seriousness of [Amnesty International's] other statements". The Minister supported his assertion by referring to two exchanges of correspondence Amnesty International had had with his ministry in the preceding year. The Minister also accused Amnesty International of being "one-sided" in the selection of information it had presented on individual cases. Finally, he provided the organization with information about the training which Berlin police officers receive, particularly in the areas of conflict management, the principles of law, and relationships with ethnic minorities.

In September 1995 Amnesty International replied to the Minister's criticisms. The organization said that in its report it had clearly stated that since July 1993 it had received no response from the Berlin Ministry of Internal Affairs regarding "specific cases of alleged ill-treatment it had raised". The two letters which Amnesty International had received from the Ministry of Internal Affairs did not provide information on individual cases, but responded to requests Amnesty International had made for a meeting, and for statistical information and copies of documents. (These requests were, in fact, substantially rejected.) Amnesty International also rejected the allegation that it had been one-sided in its reporting, saying that it had quoted from the testimony of victims, from medical records and from the records of investigations or courts. It had

also quoted evidence presented by accused police officers, where this had been available to it. In many cases this had not been possible because the authorities concerned - particularly the Berlin Ministry of Internal Affairs - had failed to respond to its requests for information. Finally, Amnesty International stated that it was aware that training of the sort the Minister had described existed - indeed it had referred to it in its May report. The organization's concern, however, was that training programs had not proven adequate to prevent police officers, particularly in Berlin, from ill-treating detainees in their custody.

### *The German Union of Police Officers*

In January 1996 Amnesty International received a detailed response to its May report from the Union of Police Officers - the largest trade union representing police officers in Germany. In his letter to Amnesty International, Hermann Lutz, the Chairman of the Union, commented on both the conclusions contained in the report and on the recommendations proposed by Amnesty International. On a number of points - particularly the need for constant monitoring and improving of police training, and for clear and comprehensive statistics to be made available regarding complaints of police ill-treatment - the Chairman agreed with Amnesty International's recommendations. On a number of other points the Chairman was extremely critical of Amnesty International's work. In particular the Chairman objected to the use of the term "torture" in Amnesty International's May report. This term, the Chairman said, was generally understood to mean the "physical and/or psychological ill-treatment of prisoners in order to obtain or coerce statements or confessions". The Chairman also criticized Amnesty International for suggesting that German police officers had "systematically and methodically" ill-treated foreigners.

In fact both of these criticisms had been discussed in detail during a lengthy three-hour meeting which representatives of Amnesty International held with representatives of the German Union of Police Officers at the union's headquarters in September 1995. During this meeting Amnesty International had made it clear that in describing two of the cases it had documented as cases of "ill-treatment amounting to torture", Amnesty International had applied the definition of torture contained in Article 1 of the United Nations Convention against Torture (see footnote 1).

Amnesty International also stated that it had never used the term "systematic and methodical ill-treatment of foreigners". It had, however, stated clearly that "the consistency and regularity of the reports it has received lead [it] 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".

The numerous allegations that Amnesty International has received since publication of its May report have confirmed the organization in this view. Furthermore Amnesty International's conclusion about the extent of police abuse also appears to be shared by the authors of an internal study commissioned by the ministers of internal affairs in 1994 and completed in the summer of 1995. According to a German television report in January 1996, the 150-page study into "The Police and Foreigners" concluded not only that police abuse of foreigners - including, Amnesty International understands, cases of physical abuse - is a problem, but that it is one of more than "just a few isolated cases". In January 1996 Amnesty International called upon the Chairman of the Standing Conference of Interior Ministers to examine again the organization's May report and to

implement the recommendations contained in it. The organization also urged the authorities to publish in full the findings of the internal study and to make public their plan of action for dealing with the problems which it had identified.