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Back in the Spotlight

Allegations of police ill-treatment and excessive use of force in Germany

INTRODUCTION

“My mother told me that if I worked hard everything would be alright. I worked hard and built up my own business. But this has destroyed everything ... I cannot even smile anymore. I cannot laugh anymore. The laughter has gone ... the laughter has gone.”

Josef Hoss is a small businessman operating his own tile-laying business. Shortly after departing for work on 8 December 2000 the then 49-year-old Josef Hoss' van was blocked by two unmarked police vehicles, from in front and behind, in a narrow lane near to his home in the small town of St. Augustin, near Bonn. Masked police officers sprang from the two vehicles, rushed towards Josef Hoss' van, smashed in the passenger-side window with a hammer and pulled him out of the vehicle onto the road. The police officers allegedly hit the man with their batons and fists and kicked him repeatedly after he was thrown to the ground and handcuffed. Josef Hoss was said to have lost consciousness and woke up slumped against a wall, still handcuffed, with a cloth bag over his head. He sustained multiple injuries as a result of the incident, including two fractured ribs and multiple bruising and abrasions. The ill-fated episode of that December morning, however, has had much longer-term implications for Josef Hoss' health, his ability to work and subsequently his family's financial security. The basis for the police operation appeared to be a statement made by one of Josef Hoss' neighbours, a serving police officer with whom there had been a quarrel, implicating Josef Hoss with the possession of illegal firearms. However, no illegal firearms were found and no charges were ever filed against Josef Hoss. To date, none of the police officers accused of ill-treating him have faced criminal charges.

Though extremely disquieting, this episode has been only one of a significant number of incidents of alleged ill-treatment or excessive use of force which have come to the attention of Amnesty International in recent times. In certain instances, the consequences of the actions of the police have been fatal. In May 2002 North Rhine-Westphalia's political establishment was rocked by the police scandal which came to light as a result of the tragic death of 31-year-old Stephan Neisius in Cologne. Prior to his death Stephan Neisius had spent 13 days on a life support ventilation system in a Cologne hospital after being repeatedly kicked and hit by a group of police officers as he lay handcuffed on the floor of a police station in the city. Charges of bodily harm resulting in death were filed against six police officers, who came to trial in late June 2003. Although Cologne District Court convicted all six police officers of

bodily harm resulting in death on 25 July 2003, none of the accused were sentenced to periods of imprisonment. Instead, Cologne District Court sentenced the six police officers to suspended prison terms of between 12 and 16 months.

Less than two months after Stephan Neisius' death, 30-year-old René Bastubbe was shot dead by police in controversial circumstances in the town of Nordhausen in the state of Thuringia. One police officer, who was charged with René Bastubbe's negligent homicide, was brought to trial in late September 2003. Although he was acquitted of the charge in November 2003, the prosecuting authorities and the family of the deceased have appealed against the ruling. Disturbingly, police officers from the same police force had also been involved in the reckless shooting of the 62-year-old pensioner, Friedhelm Beate, in the Thuringian village of Heldrungen in June 1999. Although the shooting was regarded as a scandal in the national German news media and the subject of a documentary film, no one has ever been brought to account for Friedhelm Beate's death.

There has been more progress, albeit relatively slow, in the case of the Sudanese national, Aamir Ageeb, who died of asphyxia during his forced deportation from Frankfurt am Main airport to Khartoum via Cairo on 28 May 1999. Prior to departure the 30-year-old's arms and legs were bound and he was strapped into his aeroplane seat using multiple plastic restraints, sticking tape and an approximately five-metre long rope. During take-off police officers allegedly forced Aamir Ageeb's head and upper body down between his knees and held him in this position until the aeroplane had taken off. More than four-and-a-half years after the death no trial date has been set for the three officers of the Federal Border Police charged with his negligent homicide.

While fatalities resulting from police actions remain exceptional in Germany, serious injury is more common. In December 2002 a court in Berlin convicted a police officer of bodily harm for ill-treating a German man of Turkish origin in the capital in May 2000, sentencing him to a suspended prison term of seven months. The 41-year-old film-maker suffered concussion, a broken nose, a deep gash to his lower forehead and nose and multiple bruising to his arms and neck as a result of the incident, necessitating a stay in hospital of approximately four days. Like Josef Hoss, the traumatic experience has left a longer-lasting mark on the man, who reportedly has yet to return to work and has suffered serious financial difficulties.

Amnesty International is also concerned that even in cases of *prima facie* torture it has sometimes taken several years for the alleged perpetrators to be brought to justice. In February 1999 a court in Frankfurt am Main found two police officers guilty of beating Binyamin Safak, a man of Turkish origin. Nearly four years, however, had elapsed between the April 1995 incident, during which he was severely beaten in police custody, and the conviction of the police officers. As a result of the incident Binyamin Safak suffered multiple injuries, including serious bruising, a badly cut lip, a cracked rib and a depressed fracture of the cheek bone, necessitating a week-long stay in hospital. As the injuries suffered by Binyamin Safak were so severe, and as they were inflicted deliberately and repeatedly with

the intention of causing intense suffering, Amnesty International considered that his treatment amounted to torture.

More recently, in April 2003, charges of bodily harm were filed by Cologne Public Prosecutor's Office against three police officers accused of ill-treating the 62-year-old community activist, Walter Herrmann, in police custody in Cologne in September 2001. Walter Herrmann alleged, among other things, that a police officer pinned him to the floor of a cell by placing his knee and his full body weight on the back of his head at a time when his nose and face was pressed against the cell floor. Walter Herrmann remained in hospital for seven days following the alleged incident, recovering from first-degree concussion, bruising to the cranium, an open fracture of the bridge of the nose, bruising to the chest and a fractured rib.

Similarly, 59-year-old Doviodo Adekou underwent a nine-day stay in hospital in Wuppertal, North Rhine-Westphalia in early October 2001 after allegedly being punched in the region of the right eye by a deportation enforcement officer in the town of Mettmann. Approximately one week before the incident Doviodo Adekou had undergone a cataract operation on his right eye. As a result of the alleged blow, however, he sustained a serious injury to his right eye and subsequently lost sight in it. Criminal proceedings against the officials, however, were discontinued and the accused officials were never brought to trial.

In view of such ongoing allegations Amnesty International remains concerned that the authorities are failing to fully protect a range of human rights as guaranteed by international human rights law and standards. These include the rights to life, to freedom from torture and cruel, inhuman or degrading treatment or punishment, to security of person, and, if deprived of one's liberty, to be treated with humanity and with respect for the inherent dignity of the human person.

Alleged police ill-treatment is not a new occurrence in Germany. In 1995 and 1997 Amnesty International released two major reports detailing numerous allegations it had received in the period from January 1992 onwards alleging that German police officers had used excessive or unwarranted force in restraining or arresting people, or had deliberately subjected detainees in their custody to cruel, inhuman or degrading treatment or punishment.¹ The consistency and regularity of the reports Amnesty International had received led it to the conclusion that the problem of police ill-treatment was not one of a few isolated incidents, but rather a clear pattern of police ill-treatment of foreigners and members of ethnic minorities in Germany. A number of the individuals featured in the 1995 and 1997 reports sustained serious injuries.

In recent years Amnesty International has continued to receive allegations, albeit fewer, of a pattern of police ill-treatment and the excessive use of force against detainees. The organization has also learned of a small number of controversial fatal police shootings. A

¹ *Federal Republic of Germany: Failed by the system - police ill-treatment of foreigners* (AI Index: EUR 23/06/95) and *Federal Republic of Germany: Continuing pattern of police ill-treatment* (AI Index: EUR 23/04/97).

significant proportion of allegations of police ill-treatment and excessive use of force have continued to come from foreign nationals or members of ethnic minorities in Germany. Most complainants reported that they had been subjected to kicks and punches or were knelt on by police officers in order to deliberately cause them suffering. Some detainees stated that police officers painfully twisted their arms behind their backs or twisted and tugged their handcuffed hands. Acts of alleged ill-treatment most commonly took place at the time of arrest or in police custody. There were other reports of ill-treatment and the excessive use of force against foreign nationals subjected to a removal order from Germany. Although the number of allegations of ill-treatment and excessive use of force received by Amnesty International appears to have diminished in recent years, the seriousness of certain reports combined with the severity of injuries sustained by complainants - as highlighted in the introduction of this report - indicate that the German authorities must redouble efforts in this area and undertake all possible steps to prevent and penalize such occurrences.

One of the most effective ways of preventing and penalizing acts of ill-treatment is to investigate promptly and impartially all such instances. The facts of the case, revealed through investigation, will serve as the basis for the prosecution and other remedial actions, including reparation. The obligation to investigate all complaints and credible reports of torture and ill-treatment is imposed on Germany by international human rights law (see section II of the report). However, from its work on alleged ill-treatment in the mid-1990s Amnesty International found that, although Germany had created a structure to investigate allegations of torture and ill-treatment, this was not working as thoroughly as it should have done and had not, therefore, been effective in preventing the use of torture or ill-treatment. Several recommendations were made to address the apparent shortcomings of the system.

On the basis of the reports more recently received by Amnesty International there appear to have been some noticeable improvements in investigations into allegations of police ill-treatment and excessive use of force. Nevertheless, the organization continues to be concerned about the unreasonably protracted length of criminal investigations into alleged police ill-treatment, the apparent reluctance of some prosecuting authorities to forward cases of alleged ill-treatment to the courts, the high incidence of police counter-charges, and nominal sentences in some cases which do not appear to match the gravity of the crime. Amnesty International is concerned that these practices may result in impunity for police officers deemed to have committed human rights violations. The organization is therefore calling on the German government to take steps to establish an independent body with effective powers to monitor and investigate complaints of serious police misconduct, including alleged police ill-treatment and excessive use of force, throughout Germany (see Conclusions and Recommendations).

This report highlights the persistence of a pattern of alleged police ill-treatment and excessive use of force against detainees in Germany. In doing so, it will also address several of Amnesty International's concerns relating to the investigations into such allegations. Most of the cases outlined in the report occurred in the period 2001-2003, but a minority of cases, which have been the subject of lengthy investigative and/or legal proceedings, date back to the 1990s. The information about these cases was derived from a variety of sources, primarily

written complaints by, or interviews with, alleged victims or their lawyers, legal documents such as court decisions and forensic medical reports supplied by victims or their lawyers, and press reports. Other sources include reports by intergovernmental organizations and non-governmental organizations concerned with human rights, refugees and immigrants. For the purposes of collecting new information concerning instances of alleged police ill-treatment and updating existing cases Amnesty International undertook two research missions to Germany in September 2002 and May 2003, visiting several German towns and cities including Bamberg, Berlin, Bonn, Cologne, Düsseldorf, Frankfurt am Main, Hamburg and Nuremberg. Where possible, the information on cases referred to has been updated to the end of October 2003.

The report, however, does not claim to be a comprehensive record or analysis of the issue in Germany. Most of the cases outlined came to light as a result of individual complainants of ill-treatment or their lawyers contacting Amnesty International directly. There have been a significant number of other instances of ill-treatment featured in the German news media in recent years, most of which Amnesty International did not take action on, and which resulted in the convictions of police officers (see section I of the report: The view from within). Numerous other cases undoubtedly go unreported as individuals choose to pursue their complaints privately or, in an unknown number of cases, not at all.

I. THE SCALE OF POLICE ILL-TREATMENT IN GERMANY?

1. Official statistics

In its 1995 and 1997 reports on Germany Amnesty International called on the authorities to maintain and publish regular, uniform and comprehensive figures on complaints about ill-treatment by police officers in the individual *Länder*² and federal³ public authorities.⁴ This recommendation reflected the absence of any comprehensive register, compiling comparative statistics in the separate *Länder*. The organization recommended that a central agency collect and compile such information in order to ensure consistency and comparability between the *Länder* and urged that the official figures include information on a number of issues such as the number of complaints of ill-treatment made over a specific period of time, the steps taken in response to each complaint and the outcome of any criminal and disciplinary investigations

2 Germany is made up of 16 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.

3 Some police forces such as the Federal Border Police come under the federal, rather than the individual regional state authorities.

4 See *Federal Republic of Germany: Failed by the System - police ill-treatment of foreigners* (AI Index: EUR 23/06/95) - page 10.

conducted into alleged police ill-treatment. Eight years on, Amnesty International is not aware of any collation or collection of information on the basis of these recommendations.

Generally, official information about police ill-treatment of detainees in Germany continues to be available from two main sources: (i) annual crime figures supplied by the *Länder* and (ii) responses to parliamentary questions in the country's various state parliaments or in the federal parliament, the *Bundestag*. However, both sources of information have distinct shortcomings. The lack of uniformity of data collection between the individual *Länder* makes any comparison as well as national overview problematic. In mid-August 2002 Amnesty International wrote to the Ministries of the Interior of all 16 German *Länder* as well as the Federal Ministry of the Interior requesting the following information for the period 1997-2002:

- the number of complaints of ill-treatment lodged against police officers and the number of criminal/disciplinary proceedings initiated as a result of such complaints;
- an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment by police officers.

Identical information was requested by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) for the period 1995 and the first half of 1996 during its visit to Germany in April 1996.⁵ In its Interim Report to the CPT the German government stated that the information requested was provided to the CPT by letter dated 13 September 1996.⁶ Amnesty International, however, had far less success in obtaining the requested information. Firstly, two *Länder* did not reply to the organization's August 2002 letter or its follow-up request for information in April 2003. Secondly, nine *Länder* replied that they did not record or compile the requested information. The following replies from the Ministries of the Interior of Brandenburg and Baden-Württemberg were quite typical in this respect:⁷

"The information which you requested regarding complaints and disciplinary proceedings against police officers is not available in the state of Brandenburg, since we do not have a record of the relevant statistics."

"The information which you requested regarding ill-treatment by police officers in the state of Baden-Württemberg is not available without special investigation. We do not have relevant statistics of complaints or disciplinary proceedings regarding ill-treatment by police officers."

Of the 15 authorities which replied to Amnesty International's request for information only Lower Saxony was in a position to provide the organization with most, albeit not all, of the requested data, even if only for the period 1997-1999. For example, the

⁵ CPT/Inf (97) 9, 17 July 1997 - page 15.

⁶ CPT/Inf (97) 9, 17 July 1996 - page 101.

⁷ Similarly, no statistics were compiled by the Federal Ministry of the Interior concerning the Federal Border Police.

Ministry of the Interior of Lower Saxony stated that in the years 1997, 1998 and 1999 there were 80, 95 and 97 public prosecutorial investigations into complaints of bodily harm, resulting in one prosecution in 1997 and one in 1999. In addition, there was one investigation into negligent bodily harm in each of the three years, resulting in one conviction in 1998 and one in 1999. Disciplinary proceedings resulted in four cases throughout the 1997-1999 period. The information provided by the other *Länder*, although very welcome, was less complete.

Responses to parliamentary questions tabled in the country's various *Länder* parliaments are also a valuable information source, but such figures are not compiled on a regular or systematic basis. For example, on 29 May 2002, following the death of 31-year-old Stephan Neisius in police custody in Cologne several days earlier, the Green Party faction of the North Rhine-Westphalian parliament tabled a parliamentary question seeking, among other things, information about other cases of physical assault alleged to have taken place at the police station in question.⁸ The information elicited by the parliamentary question allowed a limited insight into allegations of ill-treatment, albeit in one localized area (see The death in custody of Stephan Neisius in section IV of this report). The drawbacks of this information source were described by one commentator in the following terms:

"The picture, which is conveyed [from such parliamentary questions], is a mosaic with many holes and varying separate parts, which are barely comparable. As a result of the frequent [parliamentary] queries there exist detailed oversights over longer periods of time of the police in the city states of Hamburg and Berlin as well as for the Federal Border Police and the Federal Crime Office. From the other *Länder* hitherto no or only occasional data is available."⁹

In view of the statistical deficiencies and gaps highlighted above, the task of accurately gauging official information concerning police ill-treatment remains challenging. One source stated in December 2000 that the conclusions drawn from a research project conducted in the mid-1980s, *Institutional Possibilities for Controlling Inappropriate Police Behaviour*, which for the first time attempted to collate criminal and disciplinary action taken against police officers, still remain wholly valid today. The research project concluded that such statistics are "rare", "widely inaccessible to the public" and "deficient in every conceivable way".¹⁰

Irrespective of concerns about the accuracy of official sources of information and their comparability, there will nevertheless be other reasons why victims of police ill-treatment will not report such acts to the authorities. In this sense the number of reported complaints is unlikely ever to reflect the actual magnitude of the phenomenon.¹¹ In such cases the perpetrators of human rights violations will go unpunished. Firstly, the chances of securing a successful conviction of a police officer accused of ill-treating a detainee are

⁸ Kleine Anfrage No.864, 29 May 2002.

⁹ Martina Kant, "Ausmaß von Polizeiübergriffen und ihre Sanktionierung: Über das Problem einer zahlenmäßigen Erfassung", in *Bürgerrechte & Polizei* 67 3/2000 - page 22.

¹⁰ *ibid* - page 21.

¹¹ *ibid* - page 23.

remote. Cases which have been successful have been relatively costly, long drawn-out processes and the eventual sanctions taken against the convicted police officers have often been nominal. In instances where complainants doubt the impartiality of the investigative authorities, reluctance to complain may also ensue. Furthermore, certain police 'excesses' can be committed in a manner which do not constitute physical ill-treatment. Acts such as verbal abuse and threats of violence on the part of police officers, for example, which may be extremely difficult to prove and are unlikely to elicit any official punitive action on the part of the authorities, often go unreported. The tendency of police officers accused of ill-treatment to bring police counter-charges against the complainant, such as resistance to state authority or insulting behaviour, also has a deterring effect on complainants. The likelihood of illegal immigrants complaining about police ill-treatment is even slimmer since deportation is a probable outcome of making themselves known to the authorities. Finally, foreign nationals may also fail to lodge complaints as they are unaware of their rights, in particular the right to complain about ill-treatment, or may not know how to initiate a complaint or even recognize that violent behaviour on the part of police officers constitutes an actionable infringement of their rights. In short, all of these factors may lead people who have been subjected to ill-treatment not to complain and thus mask the true extent of the problem.

Amnesty International believes that a central governmental agency should maintain and publish regular, uniform and comprehensive statistics on complaints about serious misconduct by officers of the individual *Länder* and federal police authorities. These figures should include: information on the number of complaints of ill-treatment and excessive use of force made against police officers over a specified period of time, the steps taken in response to each complaint and the outcome of any criminal and disciplinary investigations conducted into alleged police ill-treatment; statistics on allegations of racist abuse; and statistics on the national origin of complainants.

(A) The alleged ill-treatment of N.¹²

Not all victims of alleged police ill-treatment lodge official complaints against their treatment. It is not unknown for lawyers to advise their clients not to lodge complaints against the police in the hope that any police counter-charges will be retracted as a result. 26-year-old N., originally from Kenya, was advised to adopt such a strategy by his lawyer after allegedly being ill-treated by police officers in the *Neukölln* district of Berlin in early January 2002. Irrespective of his decision, a court found him guilty of the charges lodged by the arresting police officers in October 2002 and fined him. In a discussion with a representative of Amnesty International in June 2003 he stated that he very much regretted this chosen course of action. He stated: "I never really understood why we did not complain, it was a big mistake. I have no fear of the police. I just followed the advice of my lawyer."

According to N., shortly after 10pm on 4 January 2002 he was sitting in his car parked outside his home on *Pflügerstraße* in the *Neukölln* district of Berlin. He had just

¹² The complainant has requested to remain anonymous.

recently bought the car in order to help him secure work with an American-operated sales company. However, he had noticed a problem with the car's seatbelts. While checking the car's front and back seatbelts he noticed a police car pass by and the police officer behind the wheel look at him. Shortly afterwards, the police car was said to have driven by again and stopped some distance from N.'s car. N. was sitting in the back seat of his car testing the seatbelts when, several minutes later, he noticed that the police vehicle had parked near his car and a police officer was approaching it.

The police officer was said to have shone a torch in N.'s eyes and asked him for his identity papers. N. opened the backdoor of the car and asked the police officer whether he had violated any traffic regulations, to which reportedly he received no answer. A female police officer was also said to have approached the car with an unmuzzled police dog. A second male police officer was then said to have shone his torch into the car and stated to his colleagues that the car's key was still in the ignition. The police officer then stated that he suspected N. of trying to steal the car, to which N. reportedly remarked: "Who would steal a car from the back seat?" He then asked the police officers whether they would have stopped a German national in the same circumstances, at which point the situation reportedly escalated. According to N., he explained to the police officers that he lived on the street and he suggested that he go and fetch his German wife, who could clarify matters. He stated that this would also have allowed him to produce his passport, which he did not have on him at the time. However, as he got out of the car the police officers allegedly attacked him. The female police officer was alleged to have set the police dog onto N., while one of the male police officers sprayed pepperspray in his face and the other male reportedly placed a handcuff on his right wrist. As the pepperspray took its full effect the police officers forced N. to the ground and handcuffed him.

N. alleged that his ill-treatment continued after he was restrained. The male police officers allegedly uprighted him only to throw him onto the pavement, after which they allegedly knelt on his back and pressed his head against the ground. At the time the outside temperature was around minus four degrees Celsius. Owing to a heavy cold N. could not breathe properly and began to shout for help, fearing for his life. A number of passers-by, however, responded to his calls for help. N. stated that, as soon as two youths intervened and suggested that they inform his wife of what was happening, the police officers quickly put him on his feet and placed him in a police vehicle. While driving to a police station in the *Neukölln* district of Berlin, a fourth police officer allegedly punched N. above his right eye and repeatedly threatened him verbally with various acts of violence. At the time N. continued to suffer from the painful effects of the pepperspray. In the early hours of 27 February 2002 N. was released from police custody after which he received medical attention for his irritated eyes and bruising to his hands. N. stated that, due to the fact he was wearing two pairs of trousers owing to the freezing weather conditions, he was spared being bitten by the police dog.

In spite of the brutal incident, N.'s reportedly lawyer advised him not to lodge a complaint of bodily harm against the police officers. On 18 October 2002 a court in Berlin found N. guilty of resistance to state authority, attempted physical assault and insulting

behaviour. The four police officers rejected N.'s version of events during the trial, accusing him of having acted aggressively and refusing to produce identification. The police officers claimed that N. lashed out against them as they attempted to search him and then put up heavy resistance, allegedly hitting and kicking them, in response to their attempts to restrain him. The police dog and pepperspray were used against N. after the police were unable to restrain him totally. The fourth police officer denied punching N. in the face while transporting him to the police station. In reaching the decision the court rejected N.'s version of events and stated that it had no reason to doubt the statements of the four police officers. Although N. vehemently rejected the claims of the police, his lone statement stood against the joint statements of the four police officers, since none of the passers-by had reportedly witnessed the incident in full. The court acknowledged in its ruling, however, that - in contrast to the violent version of events portrayed by the police - none of the police officers were injured during the incident.

N.'s attempts to appeal against the court decision proved unsuccessful in March 2003. In discussion with Amnesty International in June 2003 N. stated that the incident had had a profoundly negative effect on him and had caused him great anger. He stated: "I was still angry one year later. The thing was still inside me. I could not work or do anything. I was so mad."

2. The view from within - reports of alleged ill-treatment in the German press

Just as the official statistics concerning police ill-treatment do not reflect the real magnitude of the phenomenon, neither do the allegations of police ill-treatment received by Amnesty International. The overwhelming majority of the instances of alleged police ill-treatment highlighted in this report came to Amnesty International's attention through the complainants, their lawyers or non-governmental organizations working on their behalf. Many other complainants choose to pursue their complaints in an individual capacity with the aid of a lawyer and do not turn to the organization for support. Often such complaints only come into the public domain when they are considered by a court and are brought to the attention of the general public through the media. What follows is a brief overview of a number of cases of police ill-treatment which came to light via the German news media in the period 2001-2003, nearly all of which resulted in some form of action being taken against police officers:

Disturbing reports emerged in various German newspapers in mid-November alleging that a 46-year-old police sergeant had sexually abused female deportees in Bremen. The police officer, who was reportedly suspended from duty in September 2003, was alleged to have coerced female asylum-seekers awaiting deportation into posing naked for photographs. The alleged incidents related to the period 1997 - 1999. At the time of writing an investigation into these serious allegations was ongoing.

On 15 November 2003 the *Frankfurter Rundschau* reported on the conviction of a 46-year-old police officer for dangerous bodily harm in Frankfurt am Main. A court in the city sentenced the police officer to two-and-a-half years' imprisonment for assaulting a homeless man in Bad Homburg in the state of Hesse on 26 November 2001. According to news reports, police had been called to the centre of Bad Homburg to deal with an intoxicated man who was causing a disturbance. However, attempts by four police officers to detain the man reportedly resulted in an altercation. A second police vehicle carrying the accused police officer was said to have arrived as the four police officers pinned the man to the ground. The accused police officer got out of the vehicle and allegedly jumped up and down on the homeless man and repeatedly kicked him in the region of the face. The man reportedly experienced convulsions and breathing difficulties as a result and would have died had one of the other police officers not administered emergency first aid. The man also reported to have sustained a broken nose and bruising to his head as a result of being kicked in the region of the face.

On 16 July 2003 the newspapers *die tageszeitung* and *Bremer Nachrichten* reported that the city of Bremen had reached a settlement with a 24-year-old man seeking compensation for injuries he sustained as a result of his ill-treatment by police officers in police custody during the night of 31 December 1999. Although public prosecutors were said to have been unable to secure sufficient evidence to file charges against the accused police officers, an internal police report disclosed that the then 20-year-old man had been ill-treated by police officers. As a result of his ill-treatment he reportedly suffered first-degree concussion, bruising to his face and hip and various abrasions. The city of Bremen agreed to pay the man 4,250 EUR in compensation.

The 15 July 2003 editions of the *Hamburger Morgenpost* and *Hamburger Abendblatt* reported on the trial and convictions of three police officers from Thuringia who were found guilty of physically assaulting two police colleagues. A court in Hamburg convicted them of dangerous bodily harm on 15 July and sentenced them to suspended 12-month terms of imprisonment and ordered them to each pay 1000 EUR in compensation to the victims. The three uniformed police officers from Thuringia were found guilty of repeatedly hitting two plain clothed police officers from the state of Schleswig-Holstein with their batons during a protest against the authorities' clearances of the so-called *Bambule Bauwagenplatz* squatters in Hamburg on 16 November 2002. The two police officers sustained serious injuries as a result. According to other reports, the presiding judge stated that, had the victims been ordinary demonstrators and not police officers, they would never have been able to identify the three police officers who attacked them. Thuringia's police leadership was also heavily criticized during the trial for attempting to cover up the incident.

On 27 March 2003 the *Rheinische Post* reported that a 48-year-old police officer had been suspended from duty on suspicion of having physically harmed a 24-year-old man in Oberbilk, Düsseldorf. According to the article, a colleague of the accused police officer informed superiors that, on 20 March 2003, the police officer had deliberately discharged pepperspray into the face of the Polish detainee, who had already been handcuffed. The man then reportedly collapsed and an ambulance was called for. The prosecuting authorities were investigating the incident.

On 25 January 2003 the Bavaria-based newspaper, *Fränkischer Tag* gave an account of the conviction of a 37-year-old police officer for bodily harm. According to the report, on 24 January 2003 Nuremberg District Court sentenced the police officer to two years' imprisonment for repeatedly hitting a detainee over the head with a rubber baton in a police cell in December 2001. At the time, the detainee was suffering from psychological difficulties. The police had initially been called to transport the man to the relevant health authority to decide whether he should be given institutionalized psychiatric care. Due to the man's alleged aggressive behaviour, however, on the way back from the health authority the two accompanying police officers drove him to a police station, where the ill-treatment took place. During the trial the accused police officer reportedly insisted that his action had been in self-defence after the detainee had insulted, hit and kicked him. The police officer's claim was rejected by the court as an attempt to protect himself from the allegations. The incident had only come to light after the female colleague of the convicted police officer reported the incident.

On 23 December 2002 *die tageszeitung* reported on the conviction of a 25-year-old police officer for bodily harm by a court in Berlin. The court found the police officer guilty of ill-treating a 41-year-old German man of Turkish origin outside his home in the night of 13-14 May 2000. The police officer was given a seven-month suspended prison sentence and disallowed from holding public office for two years. .

On 13 December 2002 the *Berliner Morgenpost* gave details of another case of police ill-treatment in Berlin, which resulted in the convictions of several police officers. According to the article, a court in Berlin convicted two police officers on 12 December 2002 of physically assaulting a 47-year-old Japanese television journalist in November 2000, who was covering a demonstration of the extreme far-right German National Democratic Party. The journalist was said to have approached a line of police on Berlin's *Alexanderplatz* while searching for his cameraman. One police officer, who was handed down an 18-month suspended prison sentence, punched the journalist in the face, after which a second police officer, who was given a suspended six-month prison sentence, also struck the journalist. A third police officer was sentenced to a nine-month suspended prison term for bringing the false charge of resistance to state authority against the journalist. Each of the convicted men were also ordered to pay a fine of 2000 EUR. As a result of the assault, the journalist suffered a cracked cheek-bone and contusions.

On 4 September 2002 *die tageszeitung* featured an article about a 38-year-old police officer who was convicted by a court in Berlin of physically assaulting a demonstrator. The court found the police officer guilty on 3 September 2002 of striking a demonstrator who had already been restrained by two colleagues during the annual May Day demonstration in the *Kreuzberg* district of Berlin in 2001. During the trial the accused police officer argued that he had come to the aid of two colleagues who were attempting to restrain a demonstrator while he lay on the ground. He reportedly stated that, after kneeling down to help them, he discovered that the demonstrator had amassed a number of bricks which he subsequently kicked away. However, the incident was captured on film by a cameraman from the *ZDF* television channel which reportedly clearly showed the police officer punching the

demonstrator in the region of the head. No bricks were said to be visible in the film excerpt. The court convicted the police officer of bodily harm and fined him 4950 EUR.

Similarly, on 14 May 2003 the *Frankfurter Rundschau* reported on the trial of a police officer accused of bringing false charges against a detainee. The police officer reportedly filed charges of resistance to state authority and insulting behaviour against a 66-year-old politics professor during a violent May Day protest action in Berlin in 2001. However, video footage of the incident did not show any resistance on the professor's behalf. Nevertheless, a court in Berlin acquitted the police officer of the charge on 13 May 2003, reportedly stating that the police officer had misunderstood the behaviour of the professor. The latter had reportedly always denied the charges.

On 21 June 2002 a court in Berlin convicted four police officers of ill-treating a lorry driver of Turkish origin on the evening of 16 April 2000. According to the *Berliner Morgenpost* of 8 June 2002 and *die tageszeitung* of 22 June 2002, the incident took place on *Neuköllner Hermannstraße* in Berlin. The police officers, who believed that the driver was driving whilst drunk, stopped the vehicle. The four police officers pulled the 32-year-old driver out of his vehicle, handcuffed him and threw him to the ground. The driver also alleged that a firearm was placed to his temple as the police officers pulled him from the cab of the lorry. The judge presiding over the trial hearing reportedly described the actions of the police as "a wholly unnecessary and exaggerated reaction". Two police officers were given respectively three- and six-month suspended prison sentences for bodily harm, while their colleagues received fines of 3000 and 4000 EUR.

On 7 February 2002 *die tageszeitung* gave an account of a trial of a Berlin police officer accused of hitting 40-year-old Elke Baum in the face during a demonstration on the city's *Alexanderplatz* on 27 March 1999. According to the report, the incident occurred when Elke Baum - then a member of the Berlin House of Representatives - attempted to intervene after police arrested a man during a protest against the NATO bombing of Yugoslavia. The accused police officer hit her across the temple with the back of his hand, knocking off her glasses and causing her to fall to the ground. A journalist, who had witnessed the act, testified against the officer during the trial. On 14 February 2002 Moabit District Court convicted the 30-year-old police officer of bodily harm and sentenced him to six months in prison, suspended for three years.

In November 2001 Zweibrücken Higher District Court rejected an appeal by four police officers of the Federal Border Police, who were convicted of ill-treating a Togolese asylum-seeker during an identity check in 1998. According to the *Frankfurter Rundschau* on 8 November 2000, the four men were originally convicted by a court in Landau in the state of Rhineland-Palatinate of dangerous bodily harm and coercion on 7 November 2000 and sentenced to suspended prison terms between six and 15 months.¹³

¹³ Additional information found in *Bürgerrechte & Polizei* 71 Nr.1/2002.

On 28 August 2001 *Associated Press* reported on the conviction of a police officer for six accounts of bodily harm and one account of breach of custody. On 27 August 2002 Frankfurt am Main District Court convicted and fined the 36-year-old police officer 25,200 German Marks. The incidents of ill-treatment occurred in the period 1995-1997. During two incidents, in 1995 and 1997, the police officer was found guilty of having unnecessarily hit Offenbach Kickers football fans with his baton.

Munich's District Court convicted a 34-year-old police officer during an appeals trial on 17 May 2001 of ill-treating and wrongfully depriving two detainees of their liberty. According to the *Frankfurter Rundschau* on 18 May 2001, the appeal court gave the police officer a suspended 18-month prison sentence. The police officer was also dismissed from the police force. A second, more junior, police officer was given a suspended prison sentence of 10 months, while two other police officers were acquitted of ill-treating the detainees. The convictions related to incidents which occurred during the city's October Festival in 1998, during which a handcuffed detainee was beaten by police officers, resulting in his sustaining serious damage to his eardrum. In another incident, a detainee was reportedly hit across the head and punched in the stomach by police officers. In 2000 a court had originally sentenced the 34-year-old police officer to two years nine months' imprisonment, while his three subordinates had been given suspended prison sentences of 14 months.

On 5 April 2001 Rottweil District Court in Baden-Württemberg reportedly upheld the convictions of two police officers for ill-treating a 28-year-old man. The *Frankfurter Rundschau* on 6 April 2001 stated that the police officers had detained the man as he was leaving his house in Rottweil in February 1999, after reportedly mistaking him for a criminal suspect they were pursuing. One of the police officers grabbed hold of the man, while the other police officer repeatedly hit him with his torch. The two officers were given suspended prison sentences respectively of nine and 14 months. The victim required hospital treatment for his injuries.

3. The view from without - international scrutiny of Germany's human rights track record

Incidents of alleged ill-treatment and excessive use of force, such as those described in the previous section of this report, have not escaped the notice of various international human rights mechanisms charged with the task of monitoring whether Germany is fulfilling its international obligations.

In mid-March 2003 the European Committee for the Prevention of Torture (CPT) published the report of its December 2000 visit to Germany. During its 13-day visit of various places of detention and imprisonment the CPT came across allegations of the use of excessive force by police officers during arrest as well as allegations of the use of excessive force and/or ill-treatment of foreign nationals by police officers during their forced deportation. The CPT stated:

“[T]he most common forms of ill-treatment alleged by detained persons [at the time of apprehension] were blows and kicks after they had been restrained and placed on the ground ... During and after its visit, the delegation received a number of allegations of the use of excessive force/ill-treatment of foreign nationals by police officers and *Bundesgrenzschutz* (BGS) [Federal Border Police] officials during the enforcement of removal orders at Frankfurt am Main, Berlin-Schönefeld and Stuttgart Airports. The allegations involved restraining persons with adhesive tapes, gagging, blows inflicted with fists, kicks and verbal abuse.”¹⁴ The CPT provided further detailed information about the latter allegations in its report (see section VI of this report).

The Council of Europe’s European Commission on Racism and Intolerance (ECRI) has also commented on incidents of alleged ill-treatment, particularly those involving foreign nationals, and made recommendations. In its second periodic report on Germany, published in July 2001, ECRI stated that it continued

“... to be concerned by reports of ill-treatment and misconduct by law enforcement officials at the time of arrest, during detention and in prisons, particularly involving individuals of foreign origin. There are also worrying reports of alleged ill-treatment by border guards responsible for deportations ... [T]here is a wide discrepancy between reports of excesses [committed by police officers] and the results of criminal proceedings and internal investigations of complaints, which find a relatively small number of complaints to be valid.”¹⁵

Germany has also come before several of the international expert bodies which comprise the United Nation’s (UN) system of human rights monitoring. In March 2001 Germany’s 15th periodic report on its implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination was considered in Geneva by the UN Committee for the Elimination of Racial Discrimination (CERD). In its Concluding observations the Committee expressed concern about "... repeated reports of racist incidents in police stations as well as ill-treatment inflicted by law enforcement officials on foreigners, including asylum-seekers, and German nationals of foreign origin".¹⁶ Although stating that the number of such incidents had diminished recently, CERD nevertheless urged Germany to "... strengthen existing educational measures for civil servants who deal with issues involving foreigners, including asylum seekers, and German nationals of foreign origin". This was not the first occasion on which CERD had expressed concern about the alleged ill-treatment of detainees of foreign origin by German police officers. During Germany’s combined 13th and 14th periodic review by CERD in April 1997, it expressed concern "... at instances of police brutality against foreigners, particularly Africans and Turks, which have been reported in the press. Better training and stricter disciplinary action against the perpetrators appear to be necessary.”¹⁷

¹⁴ CPT/Inf (2003) 20, 12 March 2003 - paragraphs 15 and 18.

¹⁵ CRI (2001) 36, 3 July 2001 - paragraph 33.

¹⁶ UN Doc. CERD/C/58/Misc.21/Rev.4, 22 March 2001 - paragraph 11.

¹⁷ UN Doc. CERD/C/304/Add.24, 23 April 1997 - paragraph 15.

Both the UN Human Rights Committee and the UN Committee against Torture which considered periodic reports submitted by Germany in 1996 and 1998 respectively were, however, particularly critical.¹⁸ The UN Human Rights Committee stated that it was concerned "... that there exist instances of ill-treatment of persons by the police, including foreigners and particularly members of ethnic minorities and asylum-seekers" and "there is no truly independent mechanism for investigating complaints of ill-treatment by the police."¹⁹ The UN Committee against Torture echoed these sentiments, stating in its Concluding observations, issued in May 1998, that although "no cases of torture ... have been reported" it was concerned "... at the large number of reports of police ill-treatment, mostly in the context of arrest, received from domestic and international non-governmental organizations in recent years" and "... about the apparently low rate of prosecution and conviction in the alleged incidents of ill-treatment by the police, especially of people of foreign descent."²⁰ The UN Human Rights Committee and the UN Committee against Torture are currently scheduled to respectively consider Germany's fifth and third periodic reports in March and May 2004.

In addition to the ongoing monitoring by the UN treaty bodies, individual cases of alleged ill-treatment in Germany have also been acted on by the UN's Special Rapporteurs on torture, racism and the human rights of migrants, posts currently held by Theo van Boven, Doudou Diène and Gabriela Rodríguez Pizarro respectively.²¹ Since 1999 the UN Special Rapporteur on torture has submitted 14 separate cases of concern - nine relating to alleged police ill-treatment - to the German government seeking further clarification about the allegations. In 2002 three such cases of concern were submitted jointly by the UN Special Rapporteurs on torture, racism and the human rights of migrants.²²

¹⁸ The expert bodies which monitor the implementation of the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

¹⁹ UN Doc. CCPR/C/79/Add.73, 18 November 1996 - paragraph 11.

²⁰ UN Doc. A/53/44, 11 May 1998 - paragraphs 182, 186 and 188.

²¹ The full titles of these posts are as follows: UN Special Rapporteur on torture; UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the UN Special Rapporteur on the human rights of migrants.

²² See UN Doc. E/CN.4/2003/68/Add.1, 27 February 2003 - paragraphs 544 - 550.

II. TORTURE AND ILL-TREATMENT IN INTERNATIONAL AND GERMAN LAW

1. The prohibition of torture and ill-treatment in international and German law

Torture and ill-treatment, and threats thereof, are strictly prohibited under international human rights law, under the laws of war (international humanitarian law) and under general international law. International human rights standards also prescribe measures which governments should take to prevent torture and ill-treatment, to investigate alleged cases, to bring to justice those responsible and to provide reparation to victims. The Universal Declaration of Human Rights, a highly authoritative instrument which applies to all states, unambiguously spells out the prohibition of torture and ill-treatment in Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. In addition, Germany is a state party to a series of general as well as specialized international human rights treaties which prohibit such acts, including:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);²³
- International Covenant on Civil and Political Rights (ICCPR)²⁴;
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).

All three international treaties clearly state that the prohibition of torture and ill-treatment is absolute and non-derogable and cannot be allowed or tolerated in any circumstances, as affirmed in Articles 2(2), 4 and 15 of these respective treaties. This prohibition has been accentuated by a range of international bodies, including the UN Commission on Human Rights, which has condemned “all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified”.²⁵ Similarly, the UN Special Rapporteur on torture has stated that “the legal and moral basis for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and imperative and must under no circumstances yield or be subordinated to other interests, policies and practices”.²⁶ Acts of torture and ill-treatment are therefore crimes under international law.

23 See Article 3 of the ECHR which states: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

24 See Article 7 of the ICCPR which states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

25 Resolution 2002/38 of 22 April 2002, paragraph 1, adopted without a vote.

26 UN Doc. E/CN.4/2002/137, 26 February 2002 - paragraph 15.

German constitutional and criminal law also prohibit acts of torture and cruel, inhuman or degrading treatment or punishment. Article 1 (1) of the German Constitution states: "The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority." According to Article 2 (2), "Everyone shall have the right to life and to inviolability of their person". For persons in official custody the protection afforded by Article 1 is clarified even further in section 104 (1) of the German Constitution which states that: "Detained persons may not be subjected to mental or physical ill-treatment." Acts of torture and ill-treatment are also made criminal offences under section 340 of the German Criminal Code, entitled "Bodily harm by public officials", which states: "(1) Public officials who commit, or permit to be committed, bodily harm during the exercise of their duties or in connection with these, shall be punished by a period of imprisonment of between three months and five years. In less serious cases up to five years' imprisonment or a fine shall be imposed."

It is important to note that, in addition to international and domestic law prohibiting torture and ill-treatment, there also exist corresponding standards regulating the use of force by police officers. The UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials establish that force should be used in law enforcement only when strictly necessary, that the use of force should not be disproportionate to the legitimate object to be achieved, and that firearms should not be used except as an extreme measure in a restricted range of situations. The principle of proportionality is also found within German criminal and civil law and provides that laws, action and measures of public bodies must not go beyond those strictly required to achieve the legal purpose.²⁷ Indeed, the principle of proportionality is, according to a ruling by the German Constitutional Court, enshrined in the constitution itself²⁸, and the importance of this principle is reflected clearly in the police laws of the individual *Länder*.

From the above discussion it can thus be seen that the absolute prohibition of torture and ill-treatment in Germany is firmly anchored in international as well as domestic law. However, despite the seemingly widespread acceptance of the principle, an incident came to light in February 2003, which unleashed a highly disturbing public debate on whether there are circumstances in which torture may be permissible in Germany:

²⁷ See German Law and Legal System, Nigel Foster, Blackstone, 1993, page 112.

²⁸ See *Strafprozeßordnung* - a commentary on the German Code of Criminal Procedure by Dr T Kleinknecht, K Meyer, and Dr L Meyer-Goßner, 41st Edition, Munich 1993, introductory comments, pages 4-5.

(A) Germany's torturous debate

In the early morning of 1 October 2002 the Vice-President of Frankfurt am Main police ordered a subordinate officer to use force against the criminal suspect, Magnus Gäfgen, believed to have been involved in the abduction and subsequent ransoming of an 11-year-old son of a prominent German banker. The purpose of the act was to elicit information regarding the whereabouts of the boy, whom the police believed to be still alive.

Police officers arrested 27-year-old Magnus Gäfgen, a law student and family friend of the missing boy, in connection with the abduction on 30 September 2002. Despite the repeated questioning of Magnus Gäfgen by officers at Frankfurt am Main Police Headquarters no progress was made to determine the fate of the missing child. Vice-President of Frankfurt am Main police Wolfgang Daschner reportedly wrote an internal memorandum, the contents of which emerged in the German press in mid-February 2003, stating that the suspect, after "...being warned, should be questioned again, under medical supervision, with the infliction of pain (no injuries)". Senior police officers also reportedly discussed and rejected the moral objections relating to the use of force against the detainee.

The details of the alleged methods taken against Magnus Gäfgen became known when the affair came to light. Magnus Gäfgen stated through his lawyer that, during his questioning on 1 October 2002, a police officer moved his chair directly in front of him and sat directly facing him at a distance of approximately ten centimetres. The police officer allegedly grabbed hold of Magnus Gäfgen by the shoulder and then told him that "the whole thing was not a game or a joke". According to the police officer, a specialist was on his way in a helicopter who could inflict great pain on him, which he would never have experienced before. He allegedly told the detainee that the procedure would leave no traces. Magnus Gäfgen stated that the police officer was then alleged to have imitated the sound of a helicopter and threatened that he "... would be locked in a cell with two large negroes, who could sexually assault [him]". Magnus Gäfgen divulged the whereabouts of the dead boy shortly afterwards, thus dispensing with the need to torture or ill-treat him. Wolfgang Daschner himself informed Frankfurt am Main Public Prosecutor's Office of the steps he had taken against Magnus Gäfgen, resulting in an investigation being initiated into the incident. Public prosecutors are currently considering whether to bring charges against him and several other police officers for attempting to extract information in a violent manner from Magnus Gäfgen.

However, Wolfgang Daschner, who remains in office pending the outcome of an ongoing investigation into the incident, has expressed no regret about his actions. In an interview with the German newspaper, the *Frankfurter Rundschau*, on 22 February 2003 he confirmed that a police officer with a training supervisor's licence of the German Sports Federation, who was on holiday at the time, was to be flown in to undertake the act of applying force to Magnus Gäfgen. According to Wolfgang Daschner, the act of applying force would not have constituted torture but "a police measure". He stated: "It is possible by means of simple physical pressure, for example, by straining the wrist, to inflict pain. There are certain places on the ear - every martial arts enthusiast knows this - where pressure can be

applied and it's very painful without causing injury. Beating, inflicting of injuries, the use of any appliance were expressly excluded by me." When asked what measures had been envisaged had the suspect remained silent under duress, Wolfgang Daschner replied: "At some point he would no longer have remained silent. Within a very short time". Wolfgang Daschner was also quoted in the weekly German news magazine *Focus* on 23 February 2003 - as well as several other publications - as calling for the use of force during police interrogations to be legally permitted as "a last resort" in order to save human life.

Despite the clear-cut prohibition of torture and ill-treatment, there ensued an unsettling debate on whether there were any circumstances in which torture could be permissible in Germany. While many leading political figures and civil society actors were quick to rebuff the very notion, others were surprisingly less inclined. In particular, a number of regional political leaders and other public figures stated publicly that they could sympathize with Wolfgang Daschner or could envisage exceptions to Germany's ban on torture.

The debate, however, also elicited international condemnation. The Secretary General of the Council of Europe, Walter Schwimmer, commented on the alleged incident in a Council of Europe press release of 21 February 2003, which stated: "The European Convention on Human Rights completely outlaws torture, under any circumstances. If we are to build a Europe that truly respects human rights, we must fiercely defend this principle. I shall be asking the Council of Europe's Anti-Torture Committee to examine this incident." Shortly afterwards, Silvia Casale, the President of the Council of Europe's Committee for the Prevention of Torture, in a Council of Europe question-and-answer style press release²⁹, gave the following unequivocal response to the public debate as to whether a police officer investigating Magnus Gäfgen was right to threaten the suspect with torture:

Council of Europe: *"The German police said that the threat of torture was necessary in this case in order to save a life. How do you respond to this?"*

Silvia Casale: The Committee for the Prevention of Torture, of which I am the President, strives to prevent all kinds of ill treatment. It is absolutely clear that there can be no exceptions whatsoever to the prohibition of torture. In all of the 44 Council of Europe countries which have signed up to our Convention, and also to the European Convention on Human Rights, there is a clear prohibition against all forms of torture. Germany has ratified our Convention and has also ratified the European Convention on Human Rights and many other international legal instruments that prohibit torture. That prohibition is absolute.

So you think there should be no exceptions, even if someone's life is at risk?

Silvia Casale: I know that this can create very difficult situations, and I understand that in this particular case it was about the kidnapping of a child. But there are no exceptions to the

²⁹ Silvia Casale, "There can be no exception to the prohibition of torture", Council of Europe press service, February 2003.

absolute prohibition of torture; it is part of *jus cogens* - that is to say the very highest standard of international law which cannot be set aside. Any undermining of this fundamental rule would have very harmful consequences. Torture is a horrific thing; if we depart from our standards we are all diminished.

Was this recent case in Germany something of an exception, or have there been similar cases in other European countries?

Silvia Casale: Unfortunately we have to say that there are many countries in which law enforcement officials do sometimes use violence, often to force a confession from someone in situations where the police are heavily reliant upon admissions of guilt. Now that is not the way to do police work. The police really should not have to rely on violence to get a result, and in any case it is a very flawed way to proceed because you simply cannot trust a confession that's based on violence. Moreover, the prohibition of torture and any other form of inhuman and degrading treatment or punishment means that no state should allow its officials to behave in that way."

Shortly after the incident came to light Amnesty International wrote to Frankfurt am Main Public Prosecutor's Office requesting to be informed of the findings of the investigation which had been initiated into the affair. The organization also wrote to the Minister of the Interior and Sport of Hesse, Volker Bouffier, expressing concern about the incident and calling on the Minister to remind all police officers serving in Hesse of the absolute prohibition of torture and any other cruel, inhuman or degrading treatment. It urged the authorities to initiate immediate criminal and disciplinary measures against any police officer, irrespective of their rank, deemed to have violated the prohibition of torture.

Amnesty International received a reply from the Minister of the Interior of Hesse, Volker Bouffier, in a letter dated 8 April 2003, which stated: "I can absolutely assure you that in Hesse neither the threat nor the use of torture can be legally justified; even discussion of the matter is [itself] absurd." The Minister stated that possible disciplinary proceedings against Police Vice-President Wolfgang Daschner were pending the outcome of the criminal investigation by the prosecutor's office. At the end of October 2003 the investigation was reported to be ongoing.

Frankfurt am Main District Court convicted Magnus Gäfgen of abduction and murder on 28 July 2003, sentencing him to life imprisonment. The court rejected the "confession" extracted from the suspect by the police on 1 October 2002. The court also rejected a second confession made by the suspect on a later date on the basis that he had not been informed of the inadmissibility of the first statement extracted under duress. Instead, Magnus Gäfgen was only convicted on the basis of a third confession. When sentencing Magnus Gäfgen, the main presiding judge reportedly stated that the actions of Frankfurt am Main police had not only considerably complicated the criminal proceedings against the suspect but had also caused great harm to Germany's culture of rights. Amnesty International believes that, given the gravity of the allegations, the authorities should insist that the investigation be completed

urgently, with a view to ensuring that those responsible for ordering or carrying out any acts of torture or cruel, inhuman or degrading treatment are brought to justice.

2. Germany's obligation to investigate allegations of police ill-treatment

Under international human rights law allegations of torture or ill-treatment must be promptly, thoroughly and impartially investigated. The UN Convention against Torture sets out this obligation:

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” (Article 12)

“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.” (Article 13)

In addition, the UN Convention against Torture requires each state party to take effective legislative, administrative and judicial measures to prevent acts of torture and ill-treatment from occurring. Germany has repeatedly reaffirmed its commitment to the principles enshrined in the UN Convention against Torture. Most recently, in its as yet unconsidered third periodic report to the UN Committee against Torture, Germany stated:

“... allegations made against police officers are taken very seriously and great importance is attached to thorough scrutiny ... misconduct particularly by police officers must under no circumstances be excused, but must be dealt with rigorously with all the legal means available under criminal and disciplinary law”.³⁰

Amnesty International's research on numerous individual cases of alleged ill-treatment in the period 1992-1997 led the organization to believe that, although Germany had created a structure to investigate allegations of ill-treatment, this was not working as thoroughly as it should have done and had not, therefore, been effective in preventing the use of ill-treatment. The organization's main criticisms were that investigations into alleged police ill-treatment often took too long to conclude, and that prosecuting authorities did not always examine the available evidence thoroughly and impartially, as required by international human rights law. To this end Amnesty International made the following four recommendations:

- All reports or allegations of police ill-treatment received by the police authorities should, as a matter of course, be passed immediately to the prosecuting authorities;

³⁰ UN Doc. CAT/C/49.Add.4, 2003 - paragraph 49.

- The prosecuting authorities should themselves interview the complainant, the suspected police officers and any other witnesses and, where appropriate, should examine the scene of the alleged ill-treatment;
- All allegations of police ill-treatment should be investigated by the prosecuting authorities promptly, impartially and thoroughly. In their investigations public prosecutors should pay special heed to the principles established in German law and in international human rights instruments regarding the use of force by law enforcement officials. If a criminal investigation establishes that the allegations of the complainant are credible, it should be left to a court to assess the veracity of conflicting or contradictory testimony;
- The German authorities should take effective measures to ensure that people who bring complaints of ill-treatment against police officers are protected against intimidation. Such measures should include the careful scrutiny by the prosecuting authorities of police complaints that detainees have resisted state authority, particularly those which are filed only after complaints of police ill-treatment are brought. Where complaints are filed simultaneously by a detainee alleging police ill-treatment and by police officers alleging resistance to state authority, the complaint against the alleged victim should be suspended until the result of the investigation into the behaviour of the police officers concerned has been completed.

Amnesty International's concern about the manner in which investigations into alleged police ill-treatment had been conducted in Germany was shared by the UN Human Rights Committee, UN Committee against Torture and the European Committee on Racism and Intolerance (see section VII of this report). From the cases of ill-treatment which have come to Amnesty International's attention since the publication of its 1997 report on alleged police ill-treatment in Germany, there appear to have been certain noticeable improvements in investigations. Very importantly, a greater number of allegations were passed promptly to the prosecuting authorities and, in a large number of cases, public prosecutors themselves were involved in the investigations and took on the task of interviewing complainants, eyewitnesses and the accused police officers.

Nevertheless, certain concerns persist, particularly in relation to the promptness of investigations which often take many months, or in some cases, even years to conclude. According to the UN Convention against Torture, investigations should be prompt and impartial. The requirement of promptness applies both to the time it takes for the authorities to examine the allegations initially, and to the pace of the investigation thereafter. It is in the latter respect that concerns about the promptness of investigations persist.³¹

A further concern has been that, in a number of cases which have come to Amnesty International's attention, public prosecutors discontinued criminal proceedings against police officers even when there was evidence to suggest that an act of ill-treatment may have

³¹ For example, see the cases of Doviado Adekou, C., Selim Demir, Walter Herrmann, Josef Hoss, Anthanasios Kapritsias, and Binyamin Safak in this report.

occurred, such as an injury. The German Code of Criminal Procedure requires that, in order to charge a police officer, there must be sufficient suspicion that he or she has committed a crime. However, certain prosecutors appear to apply a more restrictive interpretation of this section of the Code of Criminal Procedure than the law allows. Leading legal commentators have concluded that: "The imprecise legal concept of 'suspicion that a criminal act has been committed' leaves a not inconsiderable amount of room for personal judgement."³²

It is vitally important to recognize that unlawful acts of violence by police officers often occur in isolation where there are no independent eyewitnesses to counter the police's version of events. The victim's word is therefore frequently contradicted by the word of one or more police officers. Often an injury is the only available evidence to indicate that a complainant may have been ill-treated by police. In such situations, however, public prosecutors have sometimes exercised their 'personal judgement' to the disadvantage of the victim and have appeared to accept the police's version of events, such as that an injury resulted from the complainant's resistance to their attempts to effect an arrest.³³ Amnesty International believes, however, that it should be left to the courts to examine the veracity of conflicting or contradictory statements and evidence provided by the alleged victim and the accused police officers, particularly in cases when the alleged victim has suffered serious injury.

Finally, Amnesty International's long-standing concerns about the incidence of police counter-charges persist. A sizeable number of the individuals featured in this report who lodged complaints about their ill-treatment also faced police counter-charges, such as resistance to state authority or insulting behaviour.³⁴ The organization remains concerned that the institution of legal proceedings against a high proportion of complainants might effectively dissuade victims of ill-treatment from seeking redress.

According to the allegations of ill-treatment and excessive use of force received by Amnesty International in recent years, unlawful acts of violence against detainees have usually occurred in three contexts: (1) at the time of apprehension; (2) in police custody; and (3) during forced deportations. The following three sections of this report will highlight relatively recent examples of allegations of ill-treatment in all three contexts as well the investigations subsequently initiated into them. In looking at the three contexts in which reports of police ill-treatment have arisen, this report will also draw attention to a number of Amnesty International's persisting concerns relating to the investigations into such allegations. It is important to recognize, however, that the three contexts, referred to above, are not exhaustive as the following, albeit slightly unusual, incident reveals:

³² See *Strafprozeßordnung* - a commentary on the German Code of Criminal Procedure by T. Kleinknecht, K. Meyer and L. Meyer-Goßner, 41st edition, Munich 1993, § 170, note 1.

³³ For example, see the cases of Miriam Canning, Mohammed Kamara, Svetlana Lauer and Denis Mwakapi in this report.

³⁴ For example, see Doviado Adekou, C., Selim Demir, Walter Herrmann and Julius Osadolor in this report.

(A) The alleged ill-treatment of a Tunisian taxi driver

A number of national German newspapers featured a report of three police officers in Cologne who had allegedly attacked a 48-year-old taxi driver of Tunisian origin in the early hours of 21 September 2000. Prior to the incident the three off-duty police officers and their two companions had reportedly been drinking in Cologne's city centre and were intoxicated at the time. The police officers reportedly attempted to take a taxi from *Lichtstraße* in the *Köln-Ehrenfeld* area of the city. However, the driver of the taxi reportedly refused to take them on the grounds that there were too many of them and he was only legally allowed to carry four persons. According to media reports, the taxi driver was allegedly physically assaulted after he repeatedly refused to transport them. He was reportedly knocked to the ground and suffered bruising to his head and chest. Eyewitnesses of the alleged attack, who called the police, stated that prior to the attack the taxi driver was abused with racist language. The three police officers were subsequently arrested by police officers who had been called to the scene by eyewitnesses, and were immediately suspended from further duty.

In early November 2000 Amnesty International wrote to the Ministry of the Interior of North Rhine-Westphalia requesting to be informed of any criminal or disciplinary proceedings taken against the three suspended police officers. Cologne's District Administration informed the organization in December 2000 that both disciplinary and criminal action had been initiated against the three police officers, although the disciplinary action was pending the results of the criminal investigation. It had transpired in the course of the investigation that the charge of xenophobic language could not be upheld in relation to two of the three police officers and they had been allowed to return to duty. In the light of the ongoing investigation the authorities were not yet able to comment on the third police officer's conduct.

In a letter dated 11 October 2001 Cologne Public Prosecutor's Office informed Amnesty International of the findings of its investigation into the incident. It confirmed that an altercation had ensued between one off-duty police officer and the taxi driver, who had refused them permission to travel in his vehicle due to there being too many passengers in the group. The other two police officers were said to have taken no part in the incident except for intervening between their police colleague and the taxi driver. The two police officers were also not found to have verbally abused the taxi driver with racist language. Their colleague, however, was deemed to have become involved in a physical altercation with the taxi driver and had verbally abused him. Cologne Public Prosecutor's Office stated that, although the incident, including the verbally abusive comments, ensued from the taxi driver's refusal to transport the group, it could not be ascertained with the necessary certainty who had started the clash. The police officer was believed to have verbally abused the taxi driver with comments that "he should pack his suitcase" and "go back where he had come from", however, these comments were allegedly made after the taxi driver had broken the police officer's nose and insulted him as a "son of a bitch". Cologne Public Prosecutor's Office stated: "Under these circumstances it was unacceptable, but nevertheless understandable, that the injured man got carried away and made these remarks. Moreover, he was suspended from duty for several months. Thus one can assume that his injuries and the damage to his

professional life have served as a warning.” With the agreement of a court in Cologne criminal proceedings against the police officer were discontinued on the basis that his guilt was deemed to be insignificant.

3. The right to life

This report highlights several instances in which individuals died as a result of the actions of the police. Deaths have occurred in a number of contexts, including in police custody as a result of alleged ill-treatment by police officers (see The death in custody of Stephan Neisius), during forced deportation (see The death of Aamir Ageeb) and as a result of fatal shootings by police officers (see The fatal shootings of René Bastubbe and Friedhelm Beate). The right to life is guaranteed by international human rights law including Article 2 of the European Convention on Human Rights which states in particular: “Everyone’s right to life shall be protected by law.” Article 2 also stipulates that the force used must be “no more than absolutely necessary.” The right is also enshrined in Article 6 of the ICCPR, which states: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The Human Rights Committee noted in its General Comment on Article 6 “... States Parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the state is a matter of the utmost gravity.”³⁵

International standards have been developed to protect the right to life, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which define the limited circumstances in which law enforcement officials may use force and firearms (see section II (1) of this report: The prohibition of torture and ill-treatment in international and German law). The lethal use of force in contravention of these Principles amounts to arbitrary deprivation of life.

According to international human rights law and standards, all deaths in custody should be investigated by a judicial or other competent authority to determine the cause of death. Thus, “a prompt, thorough and impartial investigation” is a requirement under the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, which apply also to situations where death results from “excessive or illegal use of force by a public official”.³⁶ These Principles additionally stipulate that: “Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation ...”. Importantly, Principle 11 of this human rights standard requires that governments “pursue investigations through an independent commission of inquiry or similar procedure” in cases in which

³⁵ Human Rights Committee, General Comment No.6, Article 6, Sixteenth Session (1982), paragraph 3.

³⁶ The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions adopted by the UN Economic and Social Council and annexed to Resolution 1989/65.

investigations are deemed inadequate due to lack of expertise or impartiality, the importance of the matter or the apparent existence of a pattern of abuse, and in cases “where there are complaints from the family of the victim about these inadequacies or other substantive reasons.” Investigations should also be transparent, as required by Principle 16 which states: "A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate the evidence as well as conclusions and recommendations based on findings of fact and on applicable law."

The European Court on Human Rights has also outlined the essential features of an investigation under Article 2 of the European Convention on Human Rights, guaranteeing the right to life. The Court ruled in a case decided in May 2001 regarding a disputed killing in Northern Ireland that an investigation must be independent, effective, reasonably prompt, capable of public scrutiny, and capable of involving the next of kin of the deceased to the appropriate extent.³⁷ Amnesty International is currently seeking information in all four cases of deaths referred to in this report, to what extent and how Germany generally abided by the procedural obligations as laid down by the European Court in recent judgements on violation of Article 2 of the European Convention on Human Rights.

III. ALLEGED POLICE ILL-TREATMENT AT THE TIME OF APPREHENSION

In recent years there have been persisting allegations that police officers ill-treated detainees or used excessive force against them when taking them into police custody. In virtually all of the cases highlighted in this section of the report, the persons who were apprehended were not suspected of having committed a serious crime. The alleged ill-treatment generally occurred after a policing situation escalated when persons objected to the high-handed or unfair manner of their treatment by police officers. In three cases, for example, alleged police ill-treatment took place after individuals objected to the police entering their homes, while one person was allegedly ill-treated after being subjected to a possible racist assault. Victims frequently stated that police officers kicked and punched them and twisted or tugged their arms or handcuffed hands. A significant number of the cases highlighted also resulted in the victims suffering serious physical injuries and, in two cases, being hospitalized. The principles of necessity and proportionality of force as enshrined in international standards appeared to have been wholly ignored by the police officers involved in a number of these cases.

³⁷ *Jordan v UK*, 2001.

(A) The alleged ill-treatment of Josef Hoss

Josef Hoss, aged 49, was allegedly ill-treated by police officers of the Special Deployment Command on 8 December 2000 in the town of St. Augustin, near Bonn in North Rhine-Westphalia. Josef Hoss suffered multiple injuries and has been unable to work as a result of his treatment by police officers. In mid-September 2002 the Ministry of the Interior of North Rhine-Westphalia informed Amnesty International that the investigation into the incident was still ongoing. However, in late June 2003, some two-and-a-half years after the incident, Bonn Public Prosecutor's Office discontinued criminal proceedings against the police officers on the basis that there was insufficient evidence to convict them of bodily harm. Josef Hoss immediately appealed against the decision.

Josef Hoss alleged that police officers from the Special Deployment Command ill-treated him on the morning of 8 December 2000. Josef Hoss, who runs his own tile-laying business, departed from his home in St. Augustin in his van in order to transport tiles to a customer. Shortly after leaving his home a vehicle, which reportedly could not be identified as a police vehicle, drove towards him, causing him to brake. At the same moment another unidentified vehicle reportedly blocked Josef Hoss' van from behind. According to Josef Hoss, a group of masked men jumped out of the two vehicles and rushed towards his van. The men smashed the passenger side window of the van with a hammer, opened its doors and pulled Josef Hoss out of the vehicle onto the road. Josef Hoss alleged that the men hit him with their batons and fists and kicked him after he was thrown to the ground. Josef Hoss stated that, at the time of the incident, he could not identify the men as police officers and he initially believed that he was being robbed. The police officers allegedly repeatedly kicked Josef Hoss in the ribs and back, as he lay handcuffed on the ground. Shortly afterwards, he reportedly lost consciousness and woke up leaning against a wall, still handcuffed, with a cloth bag over his head. Josef Hoss stated that at no time during the incident did he attempt to resist the actions of the police officers effecting his arrest.

The police officers took Josef Hoss to a police station in St. Augustin, where he was reportedly placed in a cell without any explanation of the reasons for his arrest. His request that he inform his wife of his arrest was allegedly refused. According to Josef Hoss, he was only informed of the reason for his arrest approximately one hour later, when he was told that he had been arrested on suspicion of possessing hand-grenades and firearms. Josef Hoss was released later in the day after police officers had searched his home.

Josef Hoss suffered multiple injuries as a result of his alleged ill-treatment by the police officers. Three days after the incident, on 11 December 2000, he was medically examined by a doctor in the neighbouring town of Siegburg. According to the medical report, Josef Hoss suffered abrasions to his left eye, the ridge of his nose, right eye socket and back of his head. Signs of bruising could be seen on both outer ears, the ridge of his nose, cheeks, left shoulder blade, right hip-bone, both elbows, both wrists, on the right side of the thorax, under both armpits, on his thighs and knees on both sides of the body. In addition, there were signs that degrees of force had been applied to Josef Hoss' teeth. The doctor also suspected that Josef Hoss had sustained several broken ribs. In the medical report, the doctor stated: "[t]he injuries were only explicable by the application of a brutal degree of force, such as

reckless beating for example". A further medical examination conducted on 19 December 2000 by a second doctor confirmed that Josef Hoss had fractures to two of his ribs.

According to later medical assessments made by the first doctor, Josef Hoss' alleged ill-treatment has had longer-term effects on his physical and mental health. Since the incident Josef Hoss has been unable to resume work as a tile-layer due to pain on the left side of his upper body, which has restricted his capacity to bend and lift heavy objects. The inability to work has reportedly caused him and his family significant financial difficulties, and in March 2003 the family was forced to move house as a result. In addition, Josef Hoss is said to be suffering from post-traumatic stress as a result of the incident and has been referred to a psychiatrist in order to undergo counselling.

Shortly after the incident, Josef Hoss lodged a complaint of bodily harm against the police officers involved in the police action. The alleged ill-treatment of Josef Hoss was also the subject of an inquiry by the UN Special Rapporteur on torture, Theo van Boven, in September 2002.³⁸ The Special Rapporteur stated that the "Government recognized that these allegations are broadly correct" and confirmed that an investigation into the incident was under way at the time of writing.

In addition to the seriousness of the injuries sustained by Josef Hoss, there were also concerns about the evidence which prompted the police operation in the first instance. The operation was officially conducted on the basis that Josef Hoss had violated the Firearms Law. Josef Hoss' lawyer wrote to Bonn Public Prosecutor's Office in June 2001, questioning the concrete evidence on which the original suspicion against Josef Hoss was based and stating that there was relatively little evidence to justify the decision to mount such a large-scale police operation against Josef Hoss. It appeared that the decision to mount the police operation was based to a large extent on the testimony of one of Josef Hoss' neighbours, a serving police officer, with whom he had had a dispute. Josef Hoss stated that it was on this basis that the neighbour had brought false allegations against him, resulting in the police operation. During the operation the police officers were unable to find any hand-grenades on Josef Hoss' person, in his vehicle or at his home. Instead, several antique guns, for which Josef Hoss held the appropriate firearms licences, and a gas pistol were found at his home. The antique guns, which the Hoss family reportedly inherited, were displayed for decorative purposes on the walls of Josef Hoss' living room. The Ministry of the Interior of North Rhine-Westphalia informed Amnesty International in mid-September 2002 that the criminal proceedings against Josef Hoss for violating the Firearms Law had been discontinued by a court in Siegburg in mid-January 2002 at the state's expense.

³⁸ UN Doc. E/CN.4/2003/68/Add.1, 27 February 2003 - paragraph 538.

(B) The alleged ill-treatment of Svetlana Lauer³⁹

44-year-old Svetlana Lauer, who is a German national originally from Kazakhstan, alleged that several police officers ill-treated her at her home in Hallstadt, located outside of the Bavarian city of Bamberg, in the afternoon of 20 February 2002. There were concerns that not only did the investigation into the incident take nearly a year to complete, but that the prosecuting authorities chose not to file charges against the accused police officers, even though there was credible evidence suggesting that Svetlana Lauer may have been ill-treated.

Four police officers arrived at Svetlana Lauer's apartment at around 4.45pm with a verbal warrant issued by the prosecuting authorities to search the apartment for the purpose of securing evidence against her then 17-year-old daughter. The daughter was alleged to have stolen a number of small porcelain figurines from a department store in Hallstadt earlier in the afternoon and was arrested by the police on suspicion of shoplifting. According to Svetlana Lauer, the four police officers forced their way into her home after she had refused them entry on account of their failure to produce a written search warrant. She stated that she actively resisted their entry by obstructing their path with her body and arms because she felt that they had no right to enter her home without written permission.

Svetlana Lauer alleged that, while forcing their way into her apartment, the only female police officer among the four officials grabbed hold of her by the back of the neck and hit her head against an adjacent wall. A second male police officer, who was described by Svetlana Lauer as being the only bearded police officer in the group, allegedly grabbed hold of her arm and twisted it behind her back. With his other arm he was alleged to have grabbed hold of her hair and repeatedly hit her head against various doors and walls while leading her through the hallway of the apartment. The two remaining police officers were then said to have aided their colleagues in restraining her and handcuffing her arms behind her back. Svetlana Lauer alleged that, after being handcuffed, the female police officer, who held onto her, pulled tightly on her hair, causing her considerable pain.

The situation escalated after Svetlana Lauer began to spit at the female police officer. She stated that her two eight-year-old twin daughters, who witnessed the incident described above, were shocked and disturbed by the treatment of their mother and had begun crying. As a result, Svetlana Lauer reportedly struggled to free herself from the female police officer who was restraining her, spitting at her in frustration. The female police officer was subsequently alleged to have hit Svetlana Lauer's head against a wall of the apartment and painfully pulled her hair. After spitting at the female police officer several times, a second police officer allegedly came to the female police officer's assistance and began hitting Svetlana Lauer. The two police officers were also alleged to have twisted Svetlana Lauer's head back and forth and violently pulled on her handcuffed hands. Svetlana Lauer stated that the upper part of her house-coat was torn away from her in the process, leaving her in a semi-naked state with her upper-body covered only by her bra.

³⁹ The alleged ill-treatment of Svetlana Lauer was the subject of a joint inquiry by the UN Special Rapporteurs on torture, racism, racial discrimination, xenophobia and on the human rights of migrants in September 2002: UN Doc. E/CN.4/2003/68/Add.1, 27 February 2003 - paragraph 549.

The police officers then searched the daughter's room for the purpose of finding stolen items but were unable to find any evidence. When the police officers decided to leave, they led her out of the apartment block with her arms restrained behind her back, although by this time the handcuffs had been removed. On the way out of the apartment Svetlana Lauer scratched the female police officer in the face after one of her arms became free. The female police officer and the bearded police officer allegedly grabbed hold of Svetlana Lauer and hit her head against a wall of the apartment. In retaliation Svetlana Lauer scratched the bearded police officer in the face. All four police officers were said to have restrained Svetlana Lauer and handcuffed her arms behind her back. Svetlana Lauer alleged that the bearded police officer grabbed hold of her handcuffed hands and dragged her through the hallway of the apartment into a room. He was then alleged to have kicked the handcuffed woman and hit her head against the floor. The same police officer was then alleged to have placed his foot on her back and continued to hit her as she lay on the floor.

After Svetlana Lauer's alleged ill-treatment, the police officers escorted her to a police vehicle parked outside her home. In doing so, Svetlana Lauer complained that she was led from her home to the vehicle in full view of her two children and neighbours in the semi-naked state, described above, and without any footwear. The female police officer and her bearded colleague drove her to Hallstadt police station, where she was later charged with resisting state authority and physically assaulting the police officers. Svetlana Lauer maintained that she remained in the same semi-naked state during the two hours she spent at the police station, during which time she was interviewed by and was in full view of several male police officers.

According to a medical report issued by a doctor in Bamberg on 26 February 2002, Svetlana Lauer's injuries included: multiple bruising and grazing to the head, both shoulders, right thorax, back, bottom, arms and legs. Amnesty International was also provided with photographic evidence documenting the injuries she sustained during her arrest. A number of the bruises appeared to be several centimetres in diameter, with one bruise on Svetlana Lauer's upper right leg measuring approximately nine centimetres in diameter. As a result of the incident Svetlana Lauer lodged complaints of bodily harm, insulting behaviour and failure to render assistance against the police officers on 27 February 2002.

Slightly less than one year after the incident, however, Bamberg Public Prosecutor's Office informed Svetlana Lauer's lawyer of its decision, taken on 31 January 2003, to discontinue criminal proceedings against the police officers. The decision was taken on the basis that there was no founded suspicion of a crime having been committed by the police officers. The latter denied the charges against them and gave a strikingly different version of events to the prosecuting authorities. According to this version, the police officers had repeatedly explained to Svetlana Lauer that they had a verbal search warrant and would use force if necessary to enact it. One of the police officers then pushed on the door of the apartment and in so doing pushed Svetlana Lauer to one side. As the police officer began to search the flat Svetlana Lauer allegedly began to shout and insult the police officers and attempted to force her way into her daughter's bedroom. The female police officer was then said to have taken hold of her and pulled her back in reaction to which Svetlana Lauer acted

aggressively. With the help of a colleague the police officers succeeded in handcuffing her arms behind her back, allowing them to search the flat. According to the police, after Svetlana Lauer's handcuffs were removed, she attacked the female police officer. Svetlana Lauer was consequently pushed into her children's room where she tripped over a low-lying table. The police officers then restrained and handcuffed her on the floor, during which Svetlana Lauer allegedly scratched one of the male police officers in the face. Although the police officers denied ill-treating Svetlana Lauer, they stated that it was perfectly possible that she banged her head or other part of her body against the walls or doors during the altercation.

Bamberg Public Prosecutor's Office arranged an expert opinion to determine the cause of the injuries sustained by Svetlana Lauer. The expert opinion did not exclude the possibility that the injuries were deliberately inflicted on her by the police officers. The concluding report of the investigation by Bamberg Public Prosecutor's Office stated that the multiple injuries "... could be interpreted as the result of blunt use of force and could feasibly have been made on the afternoon of 20 February 2002. The bruising in the face could also, as described by the complainant, have stemmed from the repeated banging of the head against a wall or floor, while the small blotchy marks on both upper arms could be interpreted as grip-marks and the larger area of bruising on the right side of the ribs as well as on the right outer-side of the thigh could have been caused by her being pinned to the floor by the use of force, such as by the knee." The report, however, added: "... from a forensic point of view it could not be determined whether the documented pattern of injuries came about due to ill-treatment by police officers or rather in the course of her resisting arrest."

Since no one had observed the alleged act of ill-treatment in the apartment Svetlana Lauer's word stood against the word of the four police officers. While the expert opinion with respect to her injuries could not determine their definite cause, it did not exclude the possibility that they had been deliberately inflicted by the police officers. However, rather than leave it to a court to assess the veracity of the conflicting testimony of Svetlana Lauer and the police officers and scrutinize the expert medical evidence, the prosecuting authorities chose to discontinue criminal proceedings against the police officers. An initial attempt by Svetlana Lauer's lawyer to appeal against this decision was rejected in April 2003. Svetlana Lauer's lawyer appealed in May 2003 for a judicial review of the second decision of the prosecuting authorities to terminate criminal proceedings against the police officers, albeit unsuccessfully.

(C) The ill-treatment of Selim Demir⁴⁰

On 23 December 2002 a court in Berlin found a 28-year-old police officer guilty of bodily harm as a result of kicking and hitting a German man of Turkish origin outside his home in May 2000. The court sentenced him to a suspended seven-month prison term and disallowed him from holding public office for two years. The successful conviction of the police officer was the outcome of two-and-a-half years of legal proceedings, during which the victim, Selim

⁴⁰ The complainant has requested that a pseudonym be used instead of his real name.

Demir, and an eyewitness were the target of several police counter-charges, of which they were subsequently acquitted. The protracted nature of the investigation was also a cause for concern, as charges of bodily harm were only filed by the prosecuting authorities against the two police officers in November 2001, some 18 months after the incident. Moreover, the trial proceedings against the police officers did not begin for another year.

According to the written complaint made by then 41-year-old Selim Demir, who works as a film-maker and a journalist, four police officers arrived at his home in Berlin late in the night of 13-14 May 2000, investigating a complaint about excessive noise. Selim Demir and a small number of friends had been at home celebrating and playing music. The four police officers reportedly entered the house through an open door and climbed the stairs to the top floor where Selim Demir and his guests were located. He maintained that he apologized for the loud music and, having turned the music down, asked the police officers to leave his house. The police officers reportedly then began to search the house without producing a warrant and refused to leave after repeatedly being asked to do so. As a result of their search one of the police officers found two flower pots - among numerous others in the house - which he suspected as containing marijuana. He then confiscated cuttings from the plant, which later transpired to be completely legal. Selim Demir reportedly demanded from the police officer their proof of identification, a written record that his house had been searched by the police officers and that they had taken cuttings from his plants. A police officer reportedly told Selim Demir that he would prepare the requested documents in the police vehicle parked outside on the street.

Two police officers were alleged to have physically ill-treated Selim Demir on the way to the police vehicle. Selim Demir's house is separated from the street by an inner courtyard and a connecting passage-way. While he accompanied the police officers through the connecting passage-way, one of the police officers - described as the police group leader - violently grabbed hold of his left arm, ostensibly to take back a piece of paper he had originally given the complainant, on which his service number was written. Selim Demir alleged that, when he resisted the police officer's attempts to take possession of the piece of paper, the police officer violently grabbed hold of his neck. The police officer allegedly then handcuffed Selim Demir, after which he grabbed hold of his neck and violently threw him to the ground, causing him to hit his face and temporarily lose consciousness. While the victim lay there the two police officers allegedly kicked him.

The police officers were then alleged to have forcibly pushed Selim Demir into a police vehicle, causing him to hit his head on a table in the vehicle. He also complained that once in the police vehicle police officers continued to hit and kick him. Eyewitnesses situated in a café, which was located adjacent to the passage-way connecting the street to the complainant's house, witnessed the physical ill-treatment of Selim Demir by the police officers.

Selim Demir was later taken to the Urban and then Friedrichshain hospital in Berlin where he was treated for his injuries. As a result of the alleged ill-treatment he suffered concussion, a broken nose, a deep gash to his lower forehead and nose, and multiple large-

scale bruising to his arms and neck. The bruising to his neck corresponded to where the police group leader grabbed him before handcuffing him. Selim Demir' injuries necessitated a stay in hospital of approximately four days, during which time he underwent an operation on a nose injury. As a result of the incident, Selim Demir has reportedly been unable to resume work, causing him considerable financial difficulties.

The victim lodged complaints of bodily harm against the arresting police officers in June 2000. Disturbingly, both he and an eyewitness subsequently faced police counter-charges. The police charged Selim Demir with resistance to state authority and insulting behaviour, while an eyewitness, who had reportedly intervened in the incident, was also charged with resistance to state authority. However, both men were subsequently acquitted of all charges by a court in Berlin in June and May 2001 respectively.

The accused police officers gave a radically different version of events to that of the victim. They reportedly stated that Selim Demir repeatedly insulted them inside the apartment as "fascists" and "animals" and that he continued in this manner when accompanying the two officers to the police vehicle, prompting them to take him into custody. Selim Demir was said to have resisted their efforts to restrain him. Due to his resistance he and the police officers lost their balance and fell to the ground. The police stated that, at the moment of the fall, the police officers had restrained the detainee's arms behind his back, causing him to hit his face on the ground. Selim Demir, who was handcuffed while on the ground, reportedly continued to struggle against them, resulting in his being taken to the police vehicle where additional force was used in order to further restrain him.

The court in Berlin rejected the police's version of events. Although there was reportedly insufficient evidence to convict the police officers of deliberately throwing Selim Demir to the ground, the court convicted one of the police officers of bodily harm for repeatedly hitting and kicking Selim Demir. The police officer lodged an appeal against his conviction, which was scheduled to be considered by a court in Berlin in November 2003.

(D) The alleged ill-treatment of Denis Mwakapi

33-year-old Kenyan national Denis Mwakapi sustained a fractured arm which required major hospital surgery as a result of his being allegedly violently restrained by a police officer in Nuremberg city centre in December 2000. The incident occurred shortly after he had been attacked by two white American soldiers. In spite of the serious injury he suffered, indicating that he may have been ill-treated or subjected to excessive force, the prosecuting authorities discontinued the criminal proceedings against the police. The incident was the subject of a joint inquiry by the UN Special Rapporteurs on torture, racism, and the human rights of migrants in September 2002.⁴¹

41 UN Doc. E/CN.4/2003/68/Add.1, 27 February 2003 - paragraph 545.

Police officers detained Denis Mwakapi on *Luitpold Straße* in Nuremberg shortly after 2am on 23 December 2000 after he had been attacked by two American soldiers. Denis Mwakapi and his white German wife, Ursula Mwakapi, were reportedly en route to a bar in Nuremberg's city centre during a pre-Christmas celebration when they were approached by two American men and their two female companions, who believed that the black African was in some way harassing a white German woman. Denis and Ursula Mwakapi stated that, at the time of the assault, Denis Mwakapi had been talking loudly in an animated fashion but not in a manner which could have been construed as being aggressive. Ursula Mwakapi maintained that the two American men began punching and hitting Denis Mwakapi before she could explain to them that he was her husband. After Ursula Mwakapi was able to separate the men from her husband and explain to them that they were married, the American men were said to have apologised. Denis Mwakapi reportedly accepted their apologies, even though he sustained a swollen upper-lip during the assault.

Several police vehicles arrived at the scene very shortly after the two groups of people had begun to disperse. Denis and Ursula Mwakapi alleged that, while two police officers approached the American men and allowed them to leave after checking their identification, the two police officers who approached them treated them in an insensitive manner. They alleged that the police officers paid very little attention to Denis Mwakapi's complaint that the fight had ensued after he had been assaulted by the two American men, reportedly causing him great indignation. Ursula Mwakapi stated that she also attempted to inform the police officers of the background to the incident. According to the couple, the police officers arrested Denis Mwakapi after he became agitated and refused to calm down. One of the police officers was alleged to have taken hold of Denis Mwakapi's right arm and forcibly twisted it behind his back in order to effect the arrest, fracturing Denis Mwakapi's lower right arm in the process. The police officers were alleged to have subsequently handcuffed Denis Mwakapi and placed him in a police vehicle in spite of the detainee's repeated requests for a doctor and cries of pain. Denis Mwakapi was then driven to *Nürnberg Mitte* police station, where Denis and Ursula Mwakapi's renewed requests that Denis Mwakapi be medically examined were allegedly refused. Police officers placed him in an overnight holding cell where he was held until his release at around 10.30am on 23 December 2000, after which he was taken to hospital.

A medical examination conducted on 23 December 2000 revealed that he had suffered a fractured arm which required immediate medical attention. A medical report, documenting the treatment which Denis Mwakapi underwent at the *Dr Erler GmbH Klinik für Unfallchirurgie* in Nuremberg, stated that he was initially treated for a suspected fracture of the shaft of the ulna on 23 December 2000 and his right arm was put in a temporary plaster. He was subsequently hospitalized on 26 December 2000 in order to undergo an operation for a spiral fracture of his lower right arm which necessitated the insertion of a metal plate and ten pins into the bone. He remained in hospital until 5 January 2001 and required ongoing out-patient medical treatment thereafter.

As a result of his treatment by the police, Denis Mwakapi lodged criminal complaints of bodily harm and denial of assistance against the police officers. However, Nuremberg-Fürth Public Prosecutor's Office informed Denis Mwakapi of its decision to discontinue criminal proceedings against the two police officers in July 2001, stating that there were insufficient grounds to suspect them of having committed the criminal acts of which they were accused. During its investigation into the circumstances surrounding the incident, the prosecuting authorities had found that it could not be proven that the measures taken against Denis Mwakapi by the police officer were fully unfounded, nor the application of force disproportionate. Denis Mwakapi's behaviour was said to have given the police officer grounds to arrest him. The prosecuting authorities further stated that it could not be adequately established whether Denis Mwakapi's broken arm resulted from the measures taken against him by the arresting police officer or due to his prior involvement in an altercation with the two American soldiers. Denis Mwakapi's attempts to appeal against this decision in the period July 2001-May 2002 proved unsuccessful.

Regardless of the outcome of the investigation, Denis Mwakapi has been left to live with the effects of the injury he sustained on the night of 23 December 2000. A report of a medical examination conducted by a Nuremberg doctor in February 2002 stated: "It is questionable whether full use of the arm can be restored". Since the incident, Denis Mwakapi's weakened arm has prevented him from undertaking certain types of manual work. The employment opportunities of Denis Mwakapi, who has no higher education and imperfect German, have thus become very much reduced as a result.

(E) The alleged ill-treatment of Miriam Canning

Miriam Canning, a Kenyan national in her 30s, was allegedly ill-treated by police officers in the Stuttgart area on 19 July 2001. The incident occurred after police officers entered her home in the early hours of the same morning in order to check the identification of her 19-year-old son and her cousin, who had been stopped and searched by the police earlier the same night. The Canning family's attempts to lodge a complaint against the accused police officers foundered after the prosecuting authorities discontinued criminal proceedings against the police. During the investigation a number of important issues appeared not to have been addressed by the prosecuting authorities, particularly the cause of Miriam Canning's injuries, which, according to a doctor, were perfectly consistent with her allegations.

Several days prior to the incident Miriam Canning's cousin, Jan Ndagize, had arrived from the United Kingdom to visit the Canning family and was due to leave Germany on 20 July. In order to mark the occasion Miriam Canning and her family decided to visit Stuttgart's city centre and celebrate on the evening of 18 July. At the end of the night-out the group of family and friends decided to head for home. Owing to the fact that there were too many to fit in one car, Miriam Canning asked her son, Chrispinus Juman, and Jan Ndagize to hail a taxi. Shortly afterwards, however, as Miriam Canning and her friends stood waiting for the two men to arrive with a taxi a police vehicle approached, inside of which were Chrispinus Juman and Jan Ndagize. A police officer reportedly asked if Miriam Canning knew the two men. It

transpired that they had been stopped-and-searched by the police while looking for a taxi on *Theodor-Heuss-Straße*. The men were then handcuffed and placed in a police vehicle because they did not possess appropriate forms of identification. According to the men, this was the second time that they had been stopped-and-searched by the police the same evening. Miriam Canning confirmed their identity but was told that she should go home and wait for the police officers to bring the two men home. Her request that she accompany them was reportedly refused. The two men were then taken to a Stuttgart police station and subsequently driven home, still handcuffed.

The police arrived at the Canning family apartment in the town of Möglingen at around 4.30am. According to the family's official complaint, the three police officers - one of whom was in plain-clothes - entered the apartment without asking permission. Miriam Canning stated that, after seeing her son and her cousin enter the apartment with their hands painfully handcuffed behind their backs, she became very upset and asked the police officers why they had not been brought home directly and why they had been brought handcuffed like criminals. Jan Ndagize later stated that he had several times asked the police officers to remove his handcuffs, which had been secured so tightly that his wrists were bleeding. Miriam Canning subsequently requested the police officers to remove their restraints and attempted to console her son by hugging him. The police officers were said to have ignored her protestations and, instead, the plain clothed officer allegedly pushed her aside and racially abused her by stating: "shut up you nigger".

In reaction to the insult Miriam Canning became hysterical. Jan Ndagize, whose handcuffs had been removed after his identity was confirmed, guided Miriam Canning into her son's bedroom, where a teenage family member had been sleeping. He asked the family member to calm Miriam Canning down. He then closed the door behind him and held onto the door handle to prevent Miriam Canning from getting further involved in the incident, as the police officers reportedly continued to check Chrispinus Juma's identification. Despite being shut in the room Miriam Canning continued to protest against the police officer's presence in her apartment and the treatment of her son by shouting and knocking on the door. At this point the plain clothed police officer was alleged to have telephoned Kornwestheim police station for support and, in so doing, stated that: "we are in a house full of niggers".

Soon afterwards, two more police officers from Kornwestheim police station entered the apartment. Despite Jan Ndagize's advice that Miriam Canning was still very upset and should be left alone, a police officer pushed him away from the door and two police officers entered the bedroom. As they did so, one police officer reportedly tried to push Jan Ndagize from the doorway in order to prevent his seeing the other two police officers ill-treat Miriam Canning. One police officer was alleged to have violently kicked Miriam Canning in the calf of her leg, causing her to scream loudly in pain and fall to the floor. While on the floor she was allegedly kicked in the thigh with the tip of a boot. The plain clothed police officer also allegedly stood on her leg as she lay on the bedroom floor. A child, who had been present in the room, albeit unnoticed by the police, was reported to have witnessed the incident.

Afterwards, the police officers took Miriam Canning to the living room, where they sat her down and proceeded to establish her and her son's identities, during which one police officer was said to have verbally abused Miriam Canning as a "cunt". The family also complained that the police officers addressed them in a disparaging manner and used the informal "du" form. The police officers also allegedly repeatedly refused to identify themselves and eventually left the apartment at around 6am.

Miriam Canning was examined by a doctor later on 19 July who documented a considerable degree of reddening and swelling on both of her arms and bruising to her right upper arm and upper and lower right leg. The doctor stated in his report that: "The pattern of injuries is perfectly consistent with the allegations made by the patient, the haematoma on the right thigh in particular being consistent with being kicked." After returning to the United Kingdom, Jan Ndagize sought medical treatment for a two centimetre crusted laceration to his wrist, which was caused by the tightened handcuffs.

As a result of the incident the Canning family lodged complaints against the police officers of dangerous bodily harm, insulting behaviour and unlawful deprivation of liberty in early September 2001. In a letter of 6 November 2001, however, Miriam Canning was informed that the police officers had filed counter-charges of resistance to state authority, bodily harm and insulting behaviour against her. In mid-July 2002 a local court ordered her to pay a penal order fine of 400 EUR.⁴²

In mid-July 2002 Stuttgart Public Prosecutor's Office discontinued criminal proceedings against the three police officers involved in the incident. In doing so, the prosecuting authorities rejected the complainant's version of the incident and deemed the police officers' account to be the more credible. According to the decision of the prosecuting authorities, the three police officers had rejected the allegations made against them, stating that Miriam Canning had voluntarily let them into the apartment. They maintained that after seeing her son and cousin in handcuffs she became irate and physically intervened between the police officers and her son and cousin. She was also alleged to have scratched and punched one police officer on the neck and the nose and punched another officer in the back of the head and been verbally abusive towards them. As a result of Miriam Canning's behaviour one of the three police officers called for extra police support, after the arrival of which Miriam Canning was handcuffed. According to the prosecuting authorities' report, two police officers "... took hold of her arms, brought her to the floor in a controlled manner and handcuffed her". According to the report, none of the adult eyewitnesses could confirm

⁴² Section 407 of the German Code of Criminal Procedure states that the prosecuting authorities can apply to a judge for a penal order to be issued if "the results of [their] investigations suggest that court proceedings are not necessary". Although issuing someone with a penal order technically amounts to bringing criminal charges against them, it has the important difference that the accused does not stand trial. A penal order can only be issued in the case of minor offences. The maximum penalty possible is a one year's suspended prison sentence.

actually seeing the accused police officers ill-treating Miriam Canning, albeit due to them not being in the same room at the time.

The police officers also denied using racist or any other abusive language such as “nigger” or “cunt”. The plain clothed police officer, however, did concede that he could not rule out that, in his telephone call to Kornwestheim police station, he may have used the word “Negro” - as opposed to the word “nigger”. However, he stated that this was in no way said or meant in a disparaging way. The prosecuting authorities also ruled that the alleged use of the word “Negro” was not an offence.

The repeated attempts by the Canning family and their lawyer subsequently to appeal against the decision proved unsuccessful. Miriam Canning’s husband, Gerald Canning, stated that he felt, in the course of their investigation, the prosecuting authorities attached greater importance and credibility to the statements of the police than those of the victim and other eye-witnesses. He stated: “On the one hand the police describe an event seen from different view points in identical words ... and this is regarded as ‘consistent and credible’ ... when the victims describe events seen from different viewpoints, this is judged inconsistent and not credible.” Moreover, the prosecutors were unable to offer any convincing explanation for the bruising to Miriam Canning’s calf and her thigh. In particular, Gerald Canning argued that the former injury could only have been caused by a deliberate kick and could not have been caused by her falling to the floor. The medical examination conducted 12 hours after the incident had stated that the pattern of injuries was perfectly consistent with the allegations made by the patient. Nevertheless, upon the advice of their lawyer the Canning family paid the 400 EUR fine issued as a penal order in July 2002. In total, the family spent around 3500 EUR and countless hours pursuing their case against the police.

(F) The alleged ill-treatment of Anthanasios Kapritsias

Anthanasios Kapritsias, aged 29, was allegedly ill-treated by two police officers on 2 February 1995 during a stop-and-search operation at a café in Stuttgart. The prosecuting authorities only filed charges against the police officers some three years later. Nearly five years had passed by the time the police officers were brought to trial and convicted of bodily harm, albeit only temporarily.

Two police officers stopped and searched Anthanasios Kapritsias for drugs as he drank coffee with a friend outside a café on *Bolzstraße* in Stuttgart in the early afternoon of 2 February 1995. The police officers reportedly led Anthanasios Kapritsias and his friend into the main bar where they were ordered to identify themselves, after which they were subjected to external body searches, although no drugs were found. During the search one police officer allegedly deliberately squeezed Anthanasios Kapritsias’ testicles together owing to his annoyance at the latter’s indifference to the search, reportedly causing him pain as well as bruising to his scrotum.

The ill-treatment continued when Anthanasios Kapritsias was led from the main bar area into an adjacent stairwell which was separated from the main bar area by a door. After

the door was closed the second police officer reportedly stood in front of the door to prevent anyone unexpectedly entering and looked on as the other police officer ill-treated Anthanasios Kapritsias. The complainant maintained that the police officer pushed him against the wall of the stairwell and grabbed hold of his throat, preventing him from breathing properly. In panic Anthanasios Kapritsias grabbed hold of the police officer's arms in order to alleviate the pressure on his throat. In reaction to the detainee's attempt to free himself from the chokehold, the police officer allegedly violently kned him at least twice in the left side of his upper body in the area of the kidneys and chest. The police officer then allegedly proceeded to kick the detainee's legs away, causing him to fall onto his hands and knees. According to a medical report cited in the course of the trial, Anthanasios Kapritsias suffered a number of injuries including bruising to the left side of his thorax, bruising and grazing on the right upper arm, right side of the shoulders and left side of the throat. As a result of being kned in the area of the left kidney Anthanasios Kapritsias suffered bruising of the left kidney combined with bleeding under the renal capsule of the kidney and a rupture of the kidney's renal calyx.

Nearly five years after the above incident, a court in Stuttgart convicted the two police officers of joint dangerous bodily harm concomitantly with joint bodily harm on 6 April 2000. The court sentenced them to eight-month suspended prison terms and ordered them to pay 10,000 German Marks to a charitable organization. Much time and effort had been expended by the Kapritsias family since the time of the alleged incident to bring the police officers to justice. An initial complaint of bodily harm had been rejected by the prosecuting authorities in May 1997, already more than two years after the incident. A successful judicial review of this negative decision of the prosecuting authorities resulted in Stuttgart Public Prosecutor's Office finally filing charges against both police officers in February 1998. The main trial proceedings, however, only commenced on 21 March 2000 and resulted in the conviction of the two officers during a fourth court hearing on 6 April 2000.

It therefore came as a great shock to the Kapritsias family, when on 14 September 2000, Stuttgart District Court, with the consent of the prosecuting authorities and the accused, reversed the original decision of the first court and quashed the sentences of the two police officers. The decision was taken - in accordance with Article 153 paragraph 2 of the Criminal Procedure Code - on the basis that if in case of a minor crime the guilt of the actor is insignificant and if the public interest does not require enforcement, the prosecution may terminate the proceedings, with consent of the court competent for the decision to open the main proceeding. In a letter to Amnesty International in late September 2000 Anthanasios Kapritsias' father, Asterios Kapritsias wrote:

“In my opinion this is a case of pure discrimination against my son and an attempt to protect the police officers concerned and to defend their illegal actions. Also, contrary to the decision made on 14 September 2000, I believe that this case is of great public interest. I am therefore requesting you to intervene so that this injustice is not simply pushed under the carpet, and so that the case becomes public.”

Repeated attempts by Anthanasios Kapritsias' lawyer to overturn this decision were unsuccessful.

(G) The alleged ill-treatment of C.

On 16 February 2000 a court in Frankfurt am Main found two police officers guilty of ill-treating a German man, C.⁴³ in November 1996. Nevertheless, it had taken the prosecuting authorities nearly two-and-a half years to file charges against the two police officers. By the time the police officers came to trial more than three years had elapsed since the alleged incident. A year later, on 23 March 2001, their convictions were quashed on appeal.

The detainee, who was 31 years of age at the time of the incident, alleged that he was physically ill-treated by the police officers at Frankfurt am Main's main railway station during the night of 3 November 1996. Shortly after midnight on 26 November 1996, C. was sitting on a one-metre high piece of railway equipment on platform 12 of the railway station when he and his girlfriend, who was standing next to him, were approached by two officers of the Federal Border Police. According to a criminal complaint he submitted to the Frankfurt prosecuting authorities, one of the officers told C. to get up and produce his identity card. When C. asked why, the officer reportedly said that if he did not comply "It will hurt". When he did not immediately comply with their order, the two officers grabbed hold of him, put him in an arm-lock so that his head was pushed forward and escorted him to the police station, located just outside the southern entrance to the railway hall. Despite being told to remain behind, C.'s girlfriend followed the group at a distance and attempted to enter the police station, although police officers allegedly pushed her out.

C. stated that he was taken to an area in front of the cells where one of the officers struck him in the chest. The detainee immediately asked the officer for his service number. The officer reportedly reacted by ordering him to undress. In fear, C. complied with the order. As he was undressing he repeatedly asked the officers why it was necessary for him to do so, at which point two officers allegedly pulled him to the floor. According to C., one of the officers banged his head on the ground and knelt on him while the second officer walked around them and repeatedly kicked him in the kidneys, legs and testicles. The detainee alleged that he was too afraid to cry out because the officer who was kneeling on him held his fist in front of his face. C. was pulled up by the hair and told to finish undressing. He was then ordered to face the wall and to bend over. He was allegedly kicked again. After being allowed to dress he was given a breathalyser test and informed that a formal complaint would be made against him for resisting state authority, insulting behaviour and trespass. As he made his way out of the station he was reportedly hit again. After his release C. met his girlfriend and drove to her home. Shortly after mid-day, he was examined by a doctor, who recorded multiple injuries to C.'s body, including abrasions to the throat, back, to the area of the kidneys and neck. C. was also experiencing pain all over his body, including his ears.

Amnesty International wrote to the German authorities in April 1997 expressing concern about the alleged incident and urging that a prompt and impartial investigation be launched into it. In early August 1997 the Ministry of Justice and European Affairs of Hesse informed the organization that the investigation was ongoing and various witnesses and experts still had to be questioned by the prosecuting authorities. At the time of writing, C. had

⁴³ The complainant has requested to remain anonymous.

also still to be questioned about the incident by the prosecuting authorities, even though it was approximately nine months since the incident. However, charges of bodily harm were eventually filed by the prosecuting authorities against the two police officers on 27 April 1999, nearly two-and-a-half years after the incident. The threat of police counter-charges, referred to above, also materialized. In June 1997 C. received a penal order of 1000 German Marks for alleged insulting behaviour and resistance to state authority, which he later reportedly successfully contested.

During their trial at a court in Frankfurt in February 2000 the two police officers denied ill-treating the detainee. They stated that they had politely and repeatedly asked C. to climb down from the metal box, on which he was sitting on platform 12, in case he fell and hurt himself. C. was said to have ignored their repeated requests and insulted them as “pigs” and “stupid servants of the state”. The police officers maintained that they grabbed hold of C. by the upper arms and pulled him off the metal box, to which he reacted violently, kicking them. The police officers therefore placed him in an arm lock and escorted him to the police station. The police officers denied ill-treating him in the area in front of the cells in the police station. They stated that C. kicked one of them while they attempted to search him. One of the police officers pulled C. back by the arm to prevent him from doing so, as a result of which C. lost his balance and fell over a stool, sustaining the abrasions to his body.

After taking all the available evidence into account, however, the court rejected the police officers’ version of the episode and, on 16 February 2000, found them guilty of joint deliberate bodily harm. The court stated: “After everything has been taken into account, there is no doubt that together the accused severely beat and kicked the complainant without any serious legal grounds for doing so ...” The court sentenced the police officers to suspended six-month terms of imprisonment and fined them both 1500 German Marks.

However, on 23 March 2001, Frankfurt District Court overturned the convictions on appeal on the basis that: “[I]t could not be proven sufficiently for the purposes of a conviction ... that the injuries documented by the victim were caused by the unlawful execution of duty by the accused.” Unsurprisingly, C. expressed his extreme disappointment at the decision. In a letter sent to Amnesty International in September 2002 he wrote: “The outcome of the proceedings still makes me very angry... I would have liked to appeal, but it would probably have made no sense.”

IV. ALLEGED ILL-TREATMENT IN PLACES OF POLICE DETENTION

In the course of 2001-2003 Amnesty International received a number of allegations of ill-treatment of detainees in police custody. The ill-treatment allegedly took place in the initial period of detention and in nearly all instances resulted in detainees receiving medical treatment for injuries which arose as a result. In addition to multiple bruising and abrasions, detainees suffered serious injuries, including cracks and fractures to their noses, cheekbones, thighbones, ribs and legs. Amnesty International was particularly concerned that in one instance, a 31-year-old man died as a result of being beaten by police officers at a police station in Cologne. The right to life is fundamental in international and national law, including Article 2 of the European Convention on Human Rights (see section II (3) of this report: The right to life). At the end of October 2003, the investigations into a number of incidents had recently been opened, precluding the possibility of commenting on them.⁴⁴

Encouragingly, Germany was among the 127 states who voted at the 57th session of the UN General Assembly for the adoption of the Optional Protocol to the Convention against Torture on 18 December 2002. The Optional Protocol to the Convention against Torture, once in force, will establish a system of regular visits to places of detention by an international body of experts, complemented by sustained regular visits conducted by national visiting bodies. The domestic visiting mechanisms - similar to the international body of experts - will have access, without prior consent, to any place of detention with the objective to make recommendations to prevent torture and ill-treatment of people deprived of their liberty. Amnesty International welcomed this initial step by Germany to allow a UN committee of experts and a similar domestic mechanism to visit places of detention in Germany. To date, however, Germany has not signed or ratified the Optional Protocol to the Convention against Torture, which was opened for signature on 4 February 2003. Amnesty International is therefore urging Germany to immediately sign and ratify the Optional Protocol to the Convention against Torture in order to establish a domestic visiting mechanism to inspect all places of detention in Germany.

⁴⁴ As was previously noted, during the CPT's 1996 and 2000 visits to Germany it did not receive any allegations of ill-treatment in actual places of police detention. Nonetheless, it is notable that during its 2000 visit the CPT found that certain places of police detention "... offered poor, or even very poor, material conditions of detention", particularly in Frankfurt am Main. With regard to places of police detention in this city the CPT stated: "many cells were dirty, or even in a squalid state (e.g. a cell with congealed blood on the floor at the Federal Border Police Station at Frankfurt am Main Central Railway Station), were dilapidated and were poorly ventilated and/or lit; further some cells had inadequate heating." Various recommendations were made to rectify these and other shortcomings. See CPT/Inf (2003) 20, 12 March 2003 - paragraph 30.

(A) The death in custody of Stephan Neisius

Stephan Neisius, aged 31, died in a Cologne hospital shortly after 11am on 24 May 2002 after spending 13 days on a life-support ventilation system in a hospital in Cologne. He had been admitted to hospital on 11 May 2002 after being ill-treated by several police officers at Cologne's First Police Inspectorate earlier the same evening. According to a statement made on 24 May 2002 by Cologne's Police President Klaus Steffenhagen, a special investigative commission was established under the guidance of Cologne Public Prosecutor's Office to examine the allegations that Stephan Neisius died as a result of police ill-treatment at the police station on 11 May.

Police officers had taken Stephan Neisius into custody after receiving a report of a disturbance on *Roonstraße* in Cologne at around 10pm. Stephan Neisius was involved in an argument with his 66-year-old mother, Gertrud Neisius, with whom he shared an apartment. At the time he was said to be suffering from mental health difficulties. According to accounts, police officers forced their way into the apartment after there was no response to their requests to open the door. Stefan Neisius was said to have been acting hysterically and had smashed several glass doors with a hockey stick. With the help of police reinforcements and, according to some reports, through the use of pepper-spray and considerable physical force, including punches and kicks, the police officers managed to restrain Stephan Neisius. His hands were reportedly secured behind his back and his feet immobilized with foot restraints. According to a statement made by Gertrud Neisius in the German newspaper, *Frankfurter Rundschau*, in a 17 May 2002 issue: "They [police officers] kicked in the door and beat the child to a pulp. You can barely imagine such brutality." After restraining Stephan Neisius, the police officers reportedly arrested him and carried him to a police vehicle parked outside the apartment on *Roonstraße*. Even though Stephan Neisius was suffering from mental health difficulties no doctor was called to the scene, nor was the detainee taken to a facility where he could receive psychiatric help. Instead, he was transported to the First Police Inspectorate, where he was allegedly severely beaten.

Two police officers, who were finishing their shift at the police station, made statements through their lawyer, confirming the alleged ill-treatment of Stephan Neisius at the police station. According to reports, a "reception committee" had been called by the head of the shift to meet Stephan Neisius as he arrived at the police station. The two police officers stated that they witnessed five or six police officers surrounding Stephan Neisius, as he lay handcuffed on the floor at the front of the police station, who were repeatedly kicking him in the head, body, arms and legs. Several police officers were then alleged to have grabbed hold of the Stephan Neisius legs and dragged him down a corridor into a police cell. The two police officers, who witnessed the alleged ill-treatment, stated that the detainee's face was bleeding as the police officers dragged him towards the cell. One police officer then allegedly witnessed several police officers hitting and kicking Stephan Neisius as he lay on the floor of the cell.

Due to the severity of Stephan Neisius' bleeding he was taken to the Cologne St.Marien Hospital, where he collapsed and fell into a coma. Initial attempts to revive him reportedly failed. He was then immediately placed on a life-support ventilation system and

was diagnosed by doctors as having sustained a cerebral oedema. According to various news reports, doctors discovered a clearly formed fresh bruise on the left-hand side of Stephan Neisius' forehead in the shape of a shoe sole imprint. Six police officers were suspended from service shortly after the allegations of ill-treatment came to light on suspicion of having physically harmed Stephan Neisius resulting in his death. Two of the police officers were also temporarily arrested on suspicion of deliberately tampering with evidence, including a blood-specked uniform which one police officer was wearing on the night of the alleged incident. The two police officers were later released.

The death of Stephan Neisius was the subject of a joint inquiry by the UN Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions in early September 2002.⁴⁵ However, at the time of publication of the UN Special Rapporteur on torture's report no information had been received from the German government about the case.

In the wake of Stephan Neisius' death other instances of alleged police ill-treatment at Cologne's First Police Inspectorate came to light. On 29 May 2002 the Green Party faction of the North Rhine-Westphalian parliament tabled parliamentary question No.864 seeking, among other things, information about other cases of ill-treatment alleged to have taken place at Cologne's First Police Inspectorate. It transpired that in the period of 1999-2001, 21 complaints of bodily harm had been lodged against police officers at the police station. Eighteen of the 21 complaints were discontinued on the basis that there were insufficient grounds to suspect the police officers of having committed the criminal acts of which they were accused. The findings of the investigations into two complaints were still pending at the time. In only one instance was an officer verbally reprimanded.⁴⁶

According to various reports, one of the police officers believed to have played a major part in the beating of Stephan Neisius had 12 complaints against him, mostly of bodily harm, filed in the preceding three years, and was convicted of insulting behaviour in April 2001 and fined 5400 German Marks. His dismissal was reportedly only prevented by a good reference from a superior officer.

Throughout the latter half of 2002 there was persisting uncertainty about the gravity of the criminal charges facing the six police officers accused of beating Stephan Neisius to death. However, the prosecuting authorities concluded that the violent actions of the police on 11 May had contributed to his death, leading to the charge of joint bodily harm resulting in death being filed against the six police officers on 25 February 2003. The charge of failure to render assistance which was lodged against two police officers, who had witnessed their colleagues beating Stephan Neisius, was dropped.

The trial of the six accused police officers began at Cologne District Court on 26 June 2003. Cologne District Court convicted all six police officers of bodily harm resulting in death on 25 July 2003, although none of the police officers were sentenced to periods of

⁴⁵ UN Doc. E/CN.4/2003/68/Add.1, 27 February 2003 - paragraph 543.

⁴⁶ Antwort der Landesregierung auf die Kleine Anfrage 864, Drucksache 13/2838, 12 July 2002.

imprisonment. The police officers received suspended prison terms of between 12 and 16 months. All six police officers have reportedly appealed against the suspended prison sentences.

(B) The alleged ill-treatment of an unnamed man in Cologne

A press release issued by Cologne Police on 5 March 2003 stated that a criminal investigation had been initiated into the alleged ill-treatment of an unnamed 19-year-old man at Cologne's Police Headquarters on 28 February 2003 (see the translation of the press release below). The press release confirmed that an official at the Police Headquarters tasked with supervising the detention area was alleged to have hit the detainee in the face at around 4am on 28 February 2003 after the man had repeatedly pressed the alarm button in his cell. The police official later admitted to having struck the detainee. As a result of the alleged incident, the detainee sustained a broken nose and damage to one of his teeth. The injuries were reportedly documented in the course of a medical examination conducted subsequent to the man's release on 28 February 2003.

Amnesty International wrote to Cologne Public Prosecutor's Office in mid-April 2003, expressing concern about the incident and requesting to be informed of the findings of the investigation which Cologne Public Prosecutor's Office was conducting into it. In a letter dated 7 July 2003 Cologne Public Prosecutor's Office informed the organization that all necessary steps would be taken to clarify the matter and in due course it would be informed of the outcome of the investigation.

Cologne Police press release from 5 March 2003

Investigation proceedings against police employee on the grounds of bodily harm

After his release from police custody a 19-year-old man appeared at the Criminal Investigation Department at around 5am on 28.02.2003 and brought charges against an employee who was carrying out police custody duties. This person had earlier hit him whilst he was in the cell, thereby causing him considerable injury. The 31-year-old police employee confessed that he had punched him after he had lost control following continuous provocation on the part of the prisoner.

The accused is not a police officer but an employee from the administration division, who had been working for a year in the custody department of the Cologne Police Headquarters. Investigation proceedings have been initiated against him on the grounds of bodily harm. The Public Prosecutor's office has been brought in. The Chief of Police has for the time being moved the employee to another post and has given him work in an administrative capacity in the office. Further steps which are in accordance with employment legislation are being examined.

At the moment the matter stands as follows:

Late in the evening of 27.02 (Carnival Women's Day), the 19-year-old, who had been involved in a fight, was taken into custody together with others by a police task force and taken to Police Headquarters where he was to be held temporarily to prevent further disturbances. When he was delivered into custody at the police station shortly after midnight he had an abrasion on his forehead, which clearly originated from the fight. The detainee was then placed in a single cell where he subsequently activated the emergency cell alarm repeatedly and swore in an obscene manner at the police employee who then appeared.

According to the police employee's account the detainee activated the alarm bell about 50 times despite repeated warnings and obliged him to go to the cell several times. By using verbal insults ("Nazi, wanker, arsehole, bastard pig. Here comes the super policeman") he was obviously determined to provoke him. At around 4am he went to the cell once more after the cell alarm had been triggered and punched him in the face. This was not an action planned in advance, it was just that he lost control, something that, in retrospect, he very much regrets.

The detainee admits that he repeatedly activated the bell, because he did not understand why they had continued to keep him in custody. He alleges that the police employee punched him several times. After medical examination it became apparent that the 19-year-old had suffered a broken nose and damage to an incisor. He is undergoing medical treatment.

The police employee has been transferred to another post for the time being. 116 people were taken into police custody as a result of police intervention on Carnival Women's Day.

(C) The alleged ill-treatment of Walter Herrmann⁴⁷

Sixty-two-year-old community activist Walter Herrmann was allegedly ill-treated in police custody in Cologne in September 2001. Cologne Public Prosecutor's Office filed charges of bodily harm against three accused police officers in April 2003. However, nearly 19 months had elapsed since the incident and the charges being brought against the accused police officers.

Walter Herrmann was arrested a short time after 4pm on 18 September 2001 on *Schildergasse* in Cologne's city centre. He was arrested after his repeated objections to the presence of several street clowns on stilts, who, he believed, were selling balloons to parents and their children at over-inflated prices. He had undertaken a similar protest several days previously on 14 September 2001 at the same location, for which he was also arrested. According to his account of the incident, two police officers ordered him to remain at a distance of 50 metres from the street clowns. However, his refusal to do so reportedly resulted in his arrest shortly afterwards.

Walter Herrmann alleged that he was ill-treated both at the point of arrest and at Cologne Police Headquarters. According to Walter Herrmann's account of the incident, one

⁴⁷ The case was the subject of an inquiry by the UN Special Rapporteur on torture in September 2002: UN Doc. E/CN.4/2003/68/Add.1, 27 February 2003 - paragraph 540.

police officer twisted his ears and grabbed hold of his testicles while effecting the arrest, which Walter Herrmann admitted he resisted. However, he maintained that he sustained the majority of his injuries at Cologne Police Headquarters, where, upon arrival, a police officer pulled him out of the police vehicle, and with the help of two other police officers, fixed him to the ground. Walter Herrmann stated that he would have voluntarily alighted from the vehicle, if he had been given the opportunity to do so. He alleged that the same police officer pinned him to the ground by placing his hand on the side of his head, while the two other officers attempted to twist his arms behind his back. One police officer is said to have placed his knee on the detainee's left rib cage, causing him to shout out in pain. Walter Herrmann was allegedly subsequently taken into a cell with his arms twisted high behind his back, causing him considerable difficulties in walking and thereby resulting in his twice falling forwards.

The ill-treatment allegedly continued in a police cell, where the police officer, referred to above, pinned Walter Herrmann to the floor by placing his knee and his full body weight on the back of his head. At the time his nose and face were reportedly pressed against the cell floor. Walter Herrmann was allegedly subjected to this procedure until his nose was broken and began to bleed heavily. The police officer allegedly held Walter Herrmann in this position, despite his screams, for approximately one more minute after his nose had broken and had visibly begun to bleed heavily. Simultaneously, the two other police officers allegedly twisted Walter Herrmann's arms behind his back and attached his legs with foot restraints to metal bolts incorporated into the structure of the floor of the cell.

Walter Herrmann sustained multiple injuries as a result of his alleged ill-treatment by the police officers. He was taken to hospital by the police, where he remained for seven days from 18 to 25 September 2001. According to a preliminary medical report issued by Kalk Evangelical Hospital, Walter Herrmann's injuries included first-degree concussion, bruising to the cranium, an open fracture of the bridge of the nose, bruising to the chest, and a non-displaced fracture to the seventh rib on his left side. The patient also complained of swelling and bruising to his left lower arm.

After the incident the police lodged the charge of resistance to state authority against Walter Herrmann. Walter Herrmann's lawyer informed Amnesty International in early July 2003 that the prosecuting authorities had not yet reached a decision whether charges would be brought against Walter Herrmann.

The initial position of Cologne's Police Headquarters on the matter was transmitted by Cologne's District Administration to the organization, *Aachener Friedenspreis e.V.*,⁴⁸ on 29 October 2001. In contrast to the allegations raised by Walter Herrmann, Cologne Police Headquarters attributed the injuries to the detainee resisting the attempts of the police officers to take him into custody. The letter stated: "Mr Herrmann lent such heavy resistance [to being

⁴⁸ The *Aachener Friedenspreis e.V.* is an award presenting body which gives the annual Aachen Peace Prize to organizations and individuals in recognition of their contribution to promoting peace and social justice. Walter Herrmann, who was an originator of Cologne's Wailing Wall, was a co-recipient of the prize in 1998.

taken into custody] that both he and the intervening police officers were injured during their attempt to put him in the police car. These altercations continued with the police officers who were working in police custody.” However, the letter informed *Aachener Friedenspreis e.V.* that, in the light of Walter Herrmann’s allegations against the police officers, Cologne Police Headquarters passed on the case to Cologne Public Prosecutor’s Office in order for the prosecuting authorities to determine whether the police officers were guilty of any criminal offence.

On 29 April 2003 the prosecuting authorities in Cologne informed Amnesty International in a letter of their decision to file charges against the three police officers alleged to have ill-treated Walter Herrmann while in custody at Cologne Police Headquarters. Charges against the police officers who had arrested him on *Schildergasse* were discontinued. The trial of the police officers was scheduled to begin on 19 January 2004.

(D) The alleged ill-treatment of Andre Heech

Serious allegations of ill-treatment once again emerged in the German news media in late March 2003 concerning a 30-year-old partially disabled man, Andre Heech. Police officers arrested Andre Heech, whose right leg was amputated in 1986, on 14 February 2003 for drunken behaviour in the vicinity of Frankfurt am Main’s main railway station. At the time of the incident, Andre Heech was wanted by the authorities after failing to return to prison from a short home-stay in early January 2003. He is serving a four-year prison sentence for fraud. The police were reportedly called by the owner of a bar around 9am on 14 February owing to Andre Heech and a friend’s alleged drunken behaviour. The two men were arrested separately by the police later the same morning. The police officers who arrested Andre Heech transported him to the Fourth District Police Station on *Wiesenhüttenstraße* near the city’s main railway station, where he was allegedly ill-treated in a police cell. According to various reports, Andre Heech stated that as he sat on the bench in his cell, three police officers entered. One police officer then allegedly hit the right thigh of his amputated leg three times with a long metal object, said to have resembled a water pipe. The alleged act caused the detainee considerable pain.

Although Andre Heech was sought by the police, he was released approximately one hour after the incident without charge. The accused police officers were also alleged to have refused him medical assistance, even though he visibly had problems walking. Andre Heech was only able to call for medical help after reaching a bar on *Münchener Straße* in the city after being released from police custody. An ambulance arrived shortly afterwards and took him to Frankfurt am Main’s Johann Wolfgang Goethe University Clinic where he was treated for an injury to his thighbone, which necessitated an operation. According to a report prepared by the ambulance personnel who delivered Andre Heech to hospital: “The patient complained of severe pain in the area of his right hip as well as the lower part of his amputated limb. He cannot recall a fall or other accident.” A report of the operation performed on Andre Heech at Johann Wolfgang Goethe University Clinic stated that the patient had suffered “a medial

fracture of the neck of the right femur”, more commonly referred to as a fractured right thighbone. Three steel pins were inserted into the thighbone during the operation.

Andre Heech was released from the hospital on 18 February 2003 and re-arrested by the police in late March 2003. In the intervening period he informed his lawyer about the incident. Charges of bodily harm were lodged against police officers in April 2003 and Andre Heech had been interviewed at length about the incident upon being re-arrested.

In response to the serious allegations reported in the German news media, in mid-April 2003 Amnesty International wrote to Frankfurt am Main Public Prosecutor's Office, requesting to be informed of the findings of the ongoing investigation and whether any criminal measures would be taken against the accused police officers. By the end of October 2003 no reply had been received from the prosecuting authorities concerning the incident, although there were press reports that criminal proceedings against the police officers had been discontinued.

(E) The ill-treatment of Binyamin Safak

The alleged incident, referred to above, was not the first disturbing case to emerge from Frankfurt am Main's Fourth District Police Station. On 2 February 1999 Frankfurt am Main District Court found two police officers guilty of physically assaulting a German citizen of Turkish origin, Binyamin Safak, at the police station in April 1995. Because the injuries suffered by Binyamin Safak were so severe, and as they were allegedly inflicted deliberately and repeatedly with the intention of causing intense suffering, Amnesty International referred to the case as one of alleged ill-treatment amounting to torture (see AI Index: EUR 23/04/97 and EUR 01/03/00). In spite of the seriousness of the allegations and the publicity surrounding the incident at the time, the prosecuting authorities did not lodge charges against the police officers until 10 September 1997. Frankfurt am Main District Court imposed on one police officer a conditional prison sentence of seven months and a fine, and fined the other police officer. However, nearly four years had therefore elapsed between the incident and the conviction of the two police officers.

The ill-treatment took place on 10 April 1995 at approximately 8.45pm after Binyamin Safak and his companion parked their car in front of a hot-dog stand in the centre of Frankfurt. The two officers drove up in a police vehicle and told Binyamin Safak that he could not leave his car there. When he stated that he only wanted to stop for a couple of minutes one of the police officers allegedly abused him with racist language. Upset by the use of racist language, Binyamin Safak reportedly told the police officers to be more polite. They in turn requested that he get out of his car. When he did so, one of the police officers violently pushed him to the ground and handcuffed his hands behind his back. Binyamin Safak was then driven to the police station, where the officers immediately took him to a cell without explanation.

Binyamin Safak maintained that at no stage had it been made clear to him why he had been arrested. Once in the cell the police officers began to assault him. Binyamin Safak informed Amnesty International that, over the course of about an hour, the police officers kicked and punched him in the face, chest, head and arms. At one stage one of the police officers took him by his hair, which at the time was very long, and flung him against a wall. During the course of the assault on him Binyamin Safak was unable to protect himself because his hands were still handcuffed behind his back. While Binyamin Safak was in detention his companion telephoned Binyamin Safak's parents, who arrived at the police station to ask about their son. They were reportedly told, however, that he was not there. Subsequently the parents threatened to call a lawyer and inform the Turkish Consulate. Binyamin Safak was released a short time after the visit and was found by his parents in the street outside the police station at approximately 9.45pm. They then drove him straight to the family doctor. A medical certificate from Johann Wolfgang Goethe University Clinic, where he was later treated, recorded 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 the forehead, a bruised chest, swelling of the right wrist and right knee, a cracked rib and a depressed fracture of the cheek bone. He was subsequently hospitalized for a week.

(F) The alleged ill-treatment of and excessive use of force against Mohammed Kamara

Mohammed Kamara, a 24-year-old refugee from Sierra Leone, was allegedly ill-treated by police officers in Oberhausen in June 2002 and, as a result, suffered a fractured left foot. The prosecuting authorities discontinued criminal proceedings against the police officers, although in doing so, they appeared to completely discount the injury to Mohammed Kamara's foot as evidence that he may have been ill-treated.

Two police officers detained Mohammed Kamara in the North Rhine-Westphalian town of Oberhausen railway station during the night of 25-26 June 2002 on suspicion of being drunk and disorderly. After placing him in handcuffs, the two police officers took Mohammed Kamara to the police station at the railway station, where he reportedly protested against his detention. He was said to have attempted to explain to them that he had not committed a criminal offence and therefore could not understand why he had been detained. At this point a third police officer allegedly forcibly pushed Mohammed Kamara to the floor while his hands were still handcuffed behind his back. Mohammed Kamara stated that he unsuccessfully attempted to compensate for the imbalance caused as a result of being pushed by moving his feet to rebalance himself. After falling, Mohammed Kamara felt a severe pain in his left foot. The third police officer was then said to have taken Mohammed Kamara limping to a cell, where he was held.

According to Mohammed Kamara, after some time the pain in his left foot became so severe that he began knocking on the door of the cell. It is alleged that the third police officer then opened the cell door and informed the detainee that he was making too much noise, at

which point he unexpectedly hit Mohammed Kamara on the right-hand side of his face. The police officer allegedly assaulted Mohammed Kamara in the same manner again later the same night after he repeatedly knocked on the cell door in an attempt to inform the police officer of the suspected injury to his foot. Mohammed Kamara only received medical treatment after he had been officially released from police detention in the early morning of 26 June 2002, when an ambulance took him to St. Joseph Hospital in Oberhausen. According to medical reports, Mohammed Kamara suffered fractures of the fibula and the inner ankle of his left foot, which required two operations to insert a steel plate and several steel pins. He remained in hospital until 16 July 2002.

In late September 2002 Mohammed Kamara's lawyer lodged a complaint of bodily harm against the police officers involved. However, on 20 January 2003 the lawyer learned that Duisburg Public Prosecutor's Office had terminated the investigation into the incident on the basis that it could not be sufficiently proven for the purpose of bringing charges against the police officers that a crime had been committed.

Duisburg Public Prosecutor's Office stated that its investigation had revealed that Mohammed Kamara was arrested owing to his drunken and aggressive behaviour. The arresting police officers denied shoving or hitting the detainee at the police station. They stated that the detainee had been lowered to the floor of the police station by means of a lever hold after he had refused to allow them to search him. They also alleged that Mohammed Kamara walked to the holding cell without limping or complaining of pain. According to the duty police officer, Mohammed Kamara did not complain about feeling pain in his left foot until prior to his release shortly after 5am, when an ambulance was immediately called for. At no time during the night did the police officer hit Mohammed Kamara. In addition, Mohammed Kamara was not able to give the cause of his injured foot to the doctor at St. Joseph Hospital upon arriving at the hospital. Only later did the patient maintain that he had been ill-treated by police officers. It was also said that the doctor had not received a detailed account of the incident when he later inquired. In addition, upon examining Mohammed Kamara the doctor reportedly did not find any signs of ill-treatment and the patient was said not to have informed the doctor of further instances of ill-treatment by police.

Mohammed Kamara disputed the findings of Duisburg Public Prosecutor's Office's investigation. Upon arrival at the hospital, he could not remember whether the doctor had asked him how his injured foot came about. He stated: "... I felt great pain and was completely done for, I could not speak to him, I just lay [on the bed]". He added that, after being x-rayed, he informed the doctor that his injury occurred in police custody. However, the doctor did not go into the matter.

Amnesty International was concerned that, in making the decision to discontinue proceedings against the police officers, the prosecuting authorities appeared to show little regard to the possible causes of Mohammed Kamara's fractured foot. According to their decision, the doctor who treated Mohammed Kamara stated that the injury was the typical result of twisting the ankle. As Mohammed Kamara had not specifically stated in his official complaint or informed the doctor at the hospital that he had twisted his ankle, the prosecuting

authorities appeared to wholly disregard any possibility of his having sustained it while in police custody, even though there was nothing to indicate that Mohammed Kamara had experienced difficulties walking prior to being taken into police custody. Moreover, no second expert opinion regarding the injury was reportedly sought by the prosecuting authorities, nor any other credible explanation given for the cause of the injury to the foot.

(G) The alleged ill-treatment of Julius Osadolor

Julius Osadolor, then 28 and originally from Nigeria, complained that he had been physically and verbally abused after being detained by police officers at Bochum's main railway station on 4 May 1999. As a result of the incident he and his German wife were charged with resisting state authority. They were eventually acquitted of the charges, 18 months later.

Two plain-clothes police officers stopped Julius Osadolor at Bochum's main railway station for the purpose of an identity check at around 11pm on 4 May 1999. Julius Osadolor stated that he did not have his passport on him but informed the two police officers that he could show them his driving licence. Julius Osadolor's wife Eva-Maria Osadolor was witness to the incident, having come to the railway station to meet her husband. She approached the police officers and was said to have informed them of her relationship to Julius Osadolor. Julius Osadolor alleged that, as he attempted to take his driver's licence out of his coat pocket, one of the police officers grabbed hold of his wrist and refused to let go. After Eva-Maria Osadolor reportedly intervened and told the police officer to let her husband go, two additional police officers arrived and took hold of her wrists and dragged her towards an exit of the railway station. The two remaining police officers escorted Julius Osadolor to the other side of the railway station where they handcuffed him and placed him in a police vehicle, in which he was then driven to Bochum Police Headquarters.

Julius Osadolor alleged that he was physically and verbally abused at the police station by the police officers who had taken him into detention. He stated that, after one of the police officers searched his belongings, he was told to take off his trousers and underwear. As Julius Osadolor took off his trousers his mobile telephone fell to the ground. One of the police officers picked up the mobile telephone and began searching through its memory. Julius Osadolor stated that, after he verbally protested against this search, the other police officer hit him to the ground. At this point Julius Osadolor was handcuffed and semi-naked. Julius Osadolor was then reportedly told he was free to leave the police station. He refused to leave complaining that he had been physically assaulted by the police officers, forced to undress, had his personal possessions searched through and his driver's licence torn.

The two police officers were then said to have called a superior police officer to whom Julius Osadolor repeated that he would not leave the police station. Three more police officers were said to have arrived and joined their colleagues, who allegedly made degrading and insulting comments about his genitals. One police officer reportedly said to him that his penis looked like a bottle of Cola. Another police officer allegedly told him that because of his mental condition he would not be allowed to have a driving licence. Julius Osadolor then stated that the police officers grabbed hold of him, removed the handcuffs and he was told to

sign a piece of paper stating that the police had returned all his belongings to him. As his driving licence, train ticket and the charger of his mobile phone were reportedly missing he refused to sign the list, resulting in his being placed in a cell until the police superior returned at around 2.15am and told him he would be allowed to leave if he got dressed. He was taken to an office where his wife was waiting and they left the police station.

Later on 5 May 1999 Julius Osadolor sought medical attention for the injuries he suffered as a result of the incident earlier that night. He provided Amnesty International with medical documentation stating he suffered multiple bruising as a result of the incident. He was also deemed by a doctor to be unfit for work for seven days.

Amnesty International wrote to the German authorities in July 1999, urging them to investigate Julius Osadolor's allegations of physical and verbal abuse. The organization received a response from the Ministry of the Interior of North Rhine-Westphalia in November 1999, stating that Julius Osadolor had allegedly repeatedly refused to provide the two police officers with identification upon request, and so was arrested. The Ministry also alleged that Eva-Maria Osadolor had attempted to prevent the police officers handcuffing her husband by imposing herself between the police officers and her husband and hitting out at one of the police officers, a charge which she denied. The Ministry denied that Julius Osadolor was ill-treated in custody, but stated that, pending the conclusion of the investigation of the public prosecutors it could not take any further position in relation to the case. The Osadolor family informed Amnesty International that criminal proceedings against the police officers were terminated by the prosecuting authorities on 20 September 1999. Shortly afterwards, in January and February 2000 they learned that they were to be brought to trial on the charge of resistance to state authority. On 30 October 2000, after months of anxiety, a court in Bochum rejected the claims of the police officers against Julius and Eva-Maria Osadolor.

V. ALLEGED ILL-TREATMENT AND EXCESSIVE USE OF FORCE DURING DEPORTATION

1. Amnesty International's concerns

In past years Amnesty International has received allegations, albeit appreciably fewer in recent times, of police ill-treatment and the excessive use of force against foreign nationals during deportation. Allegations have arisen in the contexts of pre-deportation detention and during deportations themselves. The organization wrote to the German authorities on a number of occasions in recent years, calling for prompt and impartial investigations into such allegations, most of which, however, were rejected as unfounded by the German authorities. From the preceding sections of the report it can be seen that even when complainants have immediate access to legal advice and are permanently based in Germany, the process of lodging a complaint can be a protracted and costly process. Predictably, few asylum-seekers, whose claim for asylum have been rejected, find themselves in a position to see the process

through. Moreover, it is important to recognize that individuals subjected to a removal order may only have limited access to the outside world and as a result will most likely have much reduced chances of substantiating an allegation of ill-treatment. Even if the deportation attempt is aborted, and he or she is returned to a pre-deportation detention centre, the person may still face communication problems, both in terms of language difficulties and the restrictions placed on their contact to the outside world. Once deported, however, they will have even fewer opportunities and resources to bring proceedings against those individuals alleged to have ill-treated them. The importance of an independent monitoring system for expulsion procedures cannot therefore be overstated. The Parliamentary Assembly of the Council of Europe underscored this need in January 2002 and urged all member states to “establish independent monitoring systems for expulsion procedures, for example by appointing observers, mediators or ombudsmen, and to conduct impartial and in-depth enquiries at all levels into allegations of ill-treatment”.⁴⁹

The German government has repeatedly stated that it takes allegations of ill-treatment during deportation “very seriously” and the investigations which revealed misconduct by officials “... were unfortunate isolated cases that should not be generalized”. It recently stated: “It should be noted in this context that by far the predominant proportion of the annual average of 30,000 deportations from German airports take place without any hint of misconduct. This does not mean, however, that the Federal Government does not take appropriate action as a result of the cases that have come to its attention.”⁵⁰ Amnesty International recognizes that most encounters between deportees and Federal Border Police do not result in allegations of ill-treatment and, in the wake of the death of the Sudanese asylum-seeker, Aamir Ageeb, in May 1999 (see below), new guidelines have been introduced regulating deportations. Nevertheless, in view of the continuing instances of ill-treatment reported by domestic non-governmental organizations and the concerns of the European Committee for the Prevention of Torture (see below), the German authorities must redouble their efforts in this area. Not only should all steps be taken to ensure that such allegations are promptly and impartially investigated, but the authorities should consider taking all possible measures to safeguard the dignity and human rights of deportees, as recommended by the Council of Europe.

The following case of alleged ill-treatment concerning a 59-year-old Togolese asylum-seeker, Doviodo Adekou, in the town of Mettmann, North Rhine-Westphalia on 1 October 2001 is illustrative of the allegations of ill-treatment received by Amnesty International in recent years. During the incident Doviodo Adekou sustained a serious injury to his right eye, which resulted in him subsequently being blind in one eye.

⁴⁹ Recommendation 1547 (2002), *Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity*, adopted by the Parliamentary Assembly of the Council of Europe on 22 January 2002 - paragraph 13 (i).

⁵⁰ UN Doc. CAT/C/49.Add.4, 2003 - paragraph 30.

(A) The alleged ill-treatment of Doviodo Adekou

Doviodo Adekou was allegedly ill-treated on the morning of 1 October 2001 as deportation enforcement officers attempted to detain him for the purposes of placing him in pre-deportation detention. Doviodo Adekou, who had applied for refugee status in Germany, had an appointment at the Office for Foreigners in Mettmann with one of its employees in order to discuss whether his temporary right to remain in the country would be extended. In the course of the meeting the employee informed Doviodo Adekou that he would be deported on 12 October 2001. Doviodo Adekou maintained that he acknowledged the decision but requested that he receive the formal decision in writing, be allowed to consult his legal advisor and prepare for his departure. A deportation enforcement officer reportedly then entered the room and placed a handcuff around Doviodo Adekou's left hand and informed him that he was being taken into custody. The officer reportedly attempted to handcuff Doviodo Adekou's other hand but had to call for assistance when his attempts failed. Three enforcement officers allegedly grabbed hold of Doviodo Adekou's arms and pulled him face-down onto the floor of the office. Doviodo Adekou alleged that, while he lay on the floor of the office, one of the officers deliberately punched him in the region of his right eye, causing it to bleed heavily. At this point the employee, who was said to have witnessed the incident, reportedly began shouting at the deportation enforcement officers to leave Doviodo Adekou alone.

The officers subsequently gave up their attempts to handcuff Doviodo Adekou. A senior official at the Office for Foreigners reportedly entered the office and instructed a colleague to call an ambulance, which took Doviodo Adekou to the Wuppertal-Barmen Clinic. He was treated as an in-patient at the clinic for nine days until 9 October 2001. Amnesty International has been provided with a report outlining the medical treatment which Doviodo Adekou underwent at the clinic. According to the report dated 11 October 2001, Doviodo Adekou was treated for a rupture to the covering of the eye which had caused bleeding in the vitreous humour of the eye. The doctor stated in the report: "[w]ith such an extremely complicated injury an end to the treatment is at the present time not yet foreseeable". Approximately one week before the incident, Doviodo Adekou had undergone an operation on his right eye. However, since suffering the blow to his eye on 1 October 2001, he has lost all sight in it and must now wear a prosthesis.

Doviodo Adekou's lawyer subsequently lodged a complaint of dangerous bodily harm against Mettmann's District Police Authority in January 2002. The alleged ill-treatment of Doviodo Adekou was also the subject of a joint inquiry by the UN Special Rapporteurs on torture, racism and the human rights of migrants in September 2002.⁵¹

The Ministry of the Interior of North Rhine-Westphalia informed Amnesty International in July 2002 that a parliamentary question had been tabled about the incident in the North Rhine-Westphalian parliament. The Ministry of the Interior of North Rhine-Westphalia responded to the parliamentary question in July, disputing Doviodo Adekou's version of events. According to its response, Doviodo Adekou had indicated that he was not

⁵¹ UN Doc. E/CN.4/2003/68/Add.1, 27 February 2003 - paragraph 547.

prepared to voluntarily leave Germany on 12 October 2001 as scheduled. Having established that Doviodo Adekou had changed address several weeks previously and believing that he may have been planning to evade his impending deportation, the deportation enforcement officers attempted to take Doviodo Adekou into custody. He was alleged to have resisted their efforts to detain him and repeatedly bit one of the deportation enforcement officers. According to this version, Doviodo Adekou's eye injury came about as a result of a defensive reflex action on the officer's part, who inadvertently struck him in the eye. Another officer was also said to have sustained scratch wounds and a broken finger. Amnesty International later learned that a complaint of resistance to state authority was lodged against Doviodo Adekou shortly after the incident. However, in view of the serious injury sustained by the victim the prosecuting authorities decided to terminate the criminal proceedings against him.

Amnesty International received further information from the Ministry of the Interior of North Rhine-Westphalia in a letter of June 2003, stating that the prosecuting authorities had discontinued criminal proceedings against the officials. No date was given for this decision. At the end of July Doviodo Adekou's temporary leave to remain in Germany was due to expire and he was awaiting a decision to determine whether he was physically fit enough to be deported to Togo.

2. Allegations received by the European Committee for the Prevention of Torture

Amnesty International has not been alone in expressing concern about reports of ill-treatment or excessive use of force against individuals subjected to a removal order from Germany. The CPT also acknowledged that it had received a number of allegations of police ill-treatment and excessive use of force against deportees by officers of the Federal Border Police during its third and fourth visits to Germany in 1998 and 2000. In the report of its December 2000 visit the CPT stated that, during and after its visit, the delegation received a number of allegations in the context of deportation at Frankfurt am Main, Berlin-Schönefeld and Stuttgart airports. The allegations were said to have involved restraining persons with adhesive tapes, gagging, blows inflicted with fists, kicks and verbal abuse.⁵² The CPT cited the following cases as examples thereof:

1. "One particular case, dating back to 27 February 1999 and documented in a detailed manner, deserves to be highlighted. The incident led to criminal proceedings both against the BGS⁵³ officials involved and the person concerned (charged with resistance against a public authority). In the BGS investigation report dated 10 March 1999, the means of restraint applied to a female Nigerian national from 12h50 until around 14h00 at the BGS facilities at Berlin-Schönefeld Airport were described as follows: the woman was placed on a wooden bench, handcuffed underneath her upper legs, feet-cuffed; hand- and feet-cuffs were attached to each other and shackled to the bench. At 14h00, a wooden stick was put underneath her upper legs, in order to

⁵² CPT/Inf (2003) 20, 12 March 2003 - paragraph 18.

⁵³ BGS = Bundesgrenzschutz (Federal Border Police).

carry her into the airplane in the position described above. In the investigation report, such techniques were qualified as common practice (durchaus üblich). On board the airplane, a BGS officer pressed one finger underneath the woman's nose and the other hand against the back of her head, in order to break her resistance; the investigation report stated: "such a technique could well prove to be ineffective, since African nationals disposed of a marked insensitiveness to pain" ("bei afrikanischen Staatsangehörigen kann dieser Kopfhaltgriff durchaus seine Wirkung verfehlen, da sie über eine ausgeprägte Unempfindlichkeit gegenüber Schmerzen verfügen"). A jacket was reportedly pressed against the woman's face before the removal had finally to be stopped because of the captain's refusal to transport her. During her transfer back to the BGS facilities, the woman was reported as having received two blows with a truncheon whilst handcuffed, in order to force her to leave the van; the investigation report qualified this as an overreaction probably due to stress."

2. "In January 2001, the CPT received reports concerning two foreign nationals who had allegedly been administered sedatives prior to their removal from Stuttgart Airport.

In the first case, a Cameroonian national alleged that, on 8 December 2000, he had received an injection by a doctor at the border police facility of Stuttgart Airport, while restrained to the floor by several police officers. In the second case, an Indian national claimed that, on 8 January 2001, he had been injected with sedatives in his arm by a doctor, while restrained on the floor by several police officers in his cell at a police station in Mannheim. Subsequently, he was said to have been transferred to Stuttgart [sic] [Frankfurt] Airport and escorted into an airplane, where he was allegedly forced to swallow a tranquillising pill. After the pilot's refusal to transport him, he had been returned to the airport detention facility, where he had allegedly been struck by several police officers on his legs, in his abdomen and face. A medical certificate drawn up after the examination of the person concerned indicated that he sustained contusions of the right cheek-bone, the right thorax and the right thigh. In both cases, criminal complaints were lodged by the persons concerned against the officials and doctors involved."⁵⁴

The German government responded to all three alleged incidents in its official response to the CPT's report.⁵⁵ Due to the investigation proceedings being ongoing at the time of publication, the German government could not confirm or deny the alleged ill-treatment of the Indian national at Frankfurt am Main airport in January 2001.⁵⁶ However, public prosecutors had declined to initiate a preliminary investigation into the reported forced sedation of the Cameroonian national as "... the injection had been given by the doctor in

⁵⁴ CPT/Inf (2003) 20, 12 March 2003 - paragraph 20.

⁵⁵ Response of the German Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Germany from 3 to 15 December 2000, CPT/Inf (2003) 20, 12 March 2003 - pages 6-7.

⁵⁶ On 30 January 2003 Frankfurt am Main Public Prosecutor's Office discontinued criminal proceedings against four officers of the Federal Border Police and a doctor. The lawyer representing the Indian national lodged a complaint against this decision, whose outcome was not known at the end of October 2003.

order to prevent self-inflicted injury”. Due to the absence of any initial suspicion of criminal conduct by the doctor being ascertained, investigation proceedings were not initiated.

No form of action was taken against the four officers of the Federal Border Police accused of ill-treating the Nigerian woman at Berlin-Schönefeld Airport in February 1999. Charges of bodily harm were rejected by Potsdam Public Prosecutor’s Office, upon appeal, on 4 April 2002. In the reasoning for its decision to discontinue the investigation Potsdam Public Prosecutor’s Office argued that “... conduct on the part of the officers ... was justified by the relevant official instructions and by acting in defence”. In restraining the Nigerian women in the manner described above and carrying her on to the aeroplane on a stick the police officers had not acted unlawfully. According to the response of the German government, the reported acts of ill-treatment were also not deemed to be unlawful: “The reflexive blow by one of the accused with the right hand in the face of the person filing the charges had been caused by the preceding bite into his hand, and was also not unlawful. This was also said to apply to the use of simple physical force in order to hold the person filing the charges down on the rear seat of the official vehicle, and to the two occasions when the truncheon was used by one of the accused. The use of physical force had been preceded by further considerable resistance on the part of the person filing the charges, in particular the attempt to kick this accused person. Although the escalation was regrettable, no other suitable, less intrusive means had been available in order to terminate the resistance.”⁵⁷

During its third visit to Germany in May 1998 the CPT had encountered similar allegations. At Frankfurt am Main airport the CPT acknowledged it had received a number of reports of police ill-treatment of deportees by officers of the Federal Border Police in 1997 and in the first half of 1998 and requested to be informed of the outcome of the investigations into the allegations. In most cases the investigation proceedings were terminated by the prosecuting authorities on grounds that the investigations carried out had not confirmed that the officers had been guilty of causing bodily harm against the person filing the charges.

In the following instance, however, a police officer was convicted by a court in Frankfurt am Main on 28 November 2000 of dangerous bodily harm after spraying an Algerian national with irritant gas. According to the German authorities: “While the asylum-seekers accommodated in the transit area [of Frankfurt am Main airport] were being counted, he had sprayed a not inconsiderable quantity of irritant gas from an irritant sprayer (CN solution) with no reason or official instruction into the cubicle of the gents toilet in which the person concerned [the Algerian national] was, causing him burning, running eyes. The Federal Border Police officer was sentenced with binding effect by judgement of Frankfurt am Main Local Court of 28 November 2000 in office to a prison sentence of seven months, suspended on probation, in respect of dangerous bodily harm.”⁵⁸

These allegations of ill-treatment underscore the utmost importance of prompt and impartial investigations into such instances, of an independent system of monitoring

⁵⁷ CPT/Inf (2003) 20, 12 March 2003 - page 6.

⁵⁸ CPT/Inf (2003) 20, 12 March 2003 - page 8.

expulsion procedures and of the need to review constantly the measures designed to safeguard the human rights of deportees. In 2000 such an independent system of monitoring of forced deportations was established in the state of North Rhine-Westphalia. In the late 1990s several non-governmental organizations, including Amnesty International, received a significant number of reports of alleged ill-treatment of asylum-seekers during their forced deportations from Germany by air, a number of which concerned North Rhine-Westphalia. These allegations were discussed in several round-table discussions in North Rhine-Westphalia between representatives from the Federal Border Police, the churches and various non-governmental organizations and resulted in the establishment of the North Rhine-Westphalian Airports Forum (“Forum Flughäfen in NRW-FFNRW“) in July 2000.

The main tasks of the organization are to monitor deportations, discuss and examine allegations of police ill-treatment and advance proposals in order to improve the social situation of deportees. A diverse number of actors are represented in the North Rhine-Westphalian Airports Forum including the Federal Border Police, Ministry of the Interior of North Rhine-Westphalia, Aliens’ Authorities, United Nations High Commission for Refugees, Refugee Council of North Rhine-Westphalia, Amnesty International and various churches and voluntary agencies. The Airports Forum employs an individual who has access to all areas connected with deportations in order to monitor expulsion procedures. Since embarking upon this task in August 2001 no further allegations of ill-treatment have been reported during deportations at airports in North Rhine-Westphalia. However, such allegations continue to be reported at other German airports, notably at Frankfurt am Main airport. Amnesty International therefore recommends that similar systems of independent monitoring be established at other airports in Germany. In no case was the need for such a system of independent monitoring more apparent than in the case of Aamir Ageeb, an asylum-seeker who died during his forced deportation from Frankfurt am Main airport in May 1999 (see below).

3. The death of Aamir Ageeb

Aamir Ageeb, a 30-year-old Sudanese asylum-seeker, died during his forced deportation on Lufthansa flight LH588 from Frankfurt am Main airport to Khartoum via Cairo on 28 May 1999. Aamir Ageeb’s arms and legs were bound with plastic restraints by Federal Border Police while in pre-deportation detention earlier that day. When he resisted deportation a helmet was placed over his head and several police officers subsequently carried him onto the aeroplane. Once on board the crowded aeroplane the police officers reportedly restrained the deportee into his seat using multiple plastic restraints, sticking tape and an approximately five metre long rope. During departure, shortly after 3pm, Aamir Ageeb reportedly started shouting. In response three police officers, two of whom were sitting either side of him and one in front, forced his head and upper body down between his knees and reportedly kept him in this position until after the aeroplane had taken off and the seat-belt sign had been turned off. When Aamir Ageeb was pushed upright, the police officers realized he had lost consciousness. An announcement was made over the aircraft tannoy to determine whether any

doctors were onboard. However, efforts to revive him by three Egyptian doctors proved unsuccessful. As a result of Aamir Ageeb's death the aeroplane made an unscheduled landing in Munich at 4.50pm, where the flight was terminated. All forced deportations from German soil were halted the next day and were not resumed until 25 June 1999. Amnesty International wrote to the Federal Ministry of the Interior in early June 1999, expressing concern that Aamir Ageeb may have died as a result of his treatment by the three police officers. In particular, the organization expressed concern about the manner in which he was reported to have been restrained, fearing that it may have impeded his breathing.

A criminal investigation was launched into the incident in late May 1999 by Frankfurt am Main Public Prosecutor's Office on suspicion that the accompanying police officers had negligently caused the death of the detainee in their custody. Prosecutors from Landshut Public Prosecutor's Office were at the scene of the incident shortly after flight LH588 arrived at Munich airport in order to gather evidence and identify eyewitnesses. On the request of Frankfurt am Main Public Prosecutor's Office the investigation was handed over to the Federal Crime Office on 1 June 1999. Detailed information about the tragic incident emerged as the investigation proceeded. Wiesbaden Federal Crime Office issued a report, 'The Restraint and Pinning-Down of Ageeb in the Aeroplane' ('Fesselung und Fixierung des Ageeb in Flugzeug'), dated 28 January 2000, which described the manner in which Aamir Ageeb was restrained by the three accompanying police officers. According to the report, Aamir Ageeb was restrained in seat 45-E of the aircraft in the following manner:

"1. One plastic restraint above each ankle, which were bound together with a third restraint = 3 plastic restraints;

- two plastic restraints below the knee-joint tied into a figure-of-eight loop = 2 plastic restraints;

- the legs were bound with Velcro and tied with a rope to the frame of the seat = 1 piece of Velcro and 1 rope;

- the hands were restrained in the wrist-area (two plastic restraints were bound into a figure-of-eight loop); in addition Velcro was wound around these restraints = 2 plastic restraints and 1 piece of Velcro;

- the upper arms were pinned to the body above the elbows by means of plastic restraints; these plastic restraints were tied together with two further plastic restraints behind the back = 4 plastic restraints;

- in addition, the upper arms were bound with Velcro just below the armpits = 1 piece of Velcro;

- furthermore, Ageeb was strapped in according to regulations and Velcro was bound across the seat-belt and was taken behind the back-rest of the seat = 1 piece of Velcro;

2. Thus 11 plastic restraints, 4 pieces of Velcro and one piece of rope of 490cm in length were used to bind him and tie him down."

From the previous excerpt it can be seen that Aamir Ageeb was completely, if not dangerously, immobilized in his aeroplane seat and his body was subjected to considerable physical pressure. On 15 September 1999 a reconstruction of the incident was staged at Frankfurt am Main airport during which a forensic doctor investigating the incident was bound and restrained in a similar manner to Aamir Ageeb. According to the expert report of the reconstruction, the volunteer's head and upper body were pushed down to his knee joints for five seconds by three people. During this time the volunteer was not able to thoracically or abdominally breathe. The person recalled the experience as being very unpleasant to the point of being alarming. A similar conclusion was reached when the exercise was tried with two people. The helmet was not said to have inhibited volunteer's breathing during the reconstruction.

An expert evaluation of Aamir Ageeb's death, which took into account the manner in which he was restrained, the reconstruction of the incident and the autopsy of the deceased from 28 May 1999 concluded: "In our opinion, there is no reasonable doubt that owing to a combination of factors already mentioned (external violence, resistance), Mr Ageeb's death was brought about by asphyxiation and ultimately by an hypoxaemic/hypoxia-induced cardio-pulmonary arrest. We are therefore dealing with a violent death. Altogether, this resulted in pathophysiological mechanisms and a state which could be covered by the term, well-known in Anglo-American literature on this subject, 'positional asphyxia'."⁵⁹

Charges of negligent homicide were filed with Frankfurt am Main District Court against the three police officers on 16 January 2002. However, at the end of October 2003 it was not known when the accused police officers would be brought to trial.

The death of Aamir Ageeb was not the first case of an asylum-seeker having died after being restrained during forcible expulsion at Frankfurt am Main airport. In August 1994 a Nigerian national, Kola Bankole, died of heart failure during his forced deportation from the same airport. He had been restrained, sedated and gagged with a device one of the police officers had made at home from socks and a belt from a window blind. Deaths during deportation have also not been confined to Germany. Between 1993 and 2003 a number of other deaths occurred during deportation in other European countries, including: the Somalian national Mariame Getu Hagos in France in January 2003; the Argentinean national Ricardo Barrientos in France in December 2002; the Nigerian national Samson Chukwu in Switzerland in May 2001; the Nigerian national Marcus Omofuma in Austria in May 1999; the Palestinian national Khaled Abuzarifa in Switzerland in March 1999; the Nigerian national Semira Adamu in Belgium in September 1998; and Jamaican-born Joy Gardener in the United Kingdom in August 1993. The Parliamentary Assembly of the Council of Europe has also stated that it is "... greatly concerned at the number of deaths resulting from the methods used to enforce expulsion orders in Council of Europe member states".⁶⁰

⁵⁹ Professor Dr Wolfgang Eisenmenger, Institut für Rechtsmedizin der Universität München, Gutachten Nr.: 01-07-0022-04, 1 June 2001.

⁶⁰ Recommendation 1547 (2002), adopted on 22 January 2002 - paragraph 1.

The tragic death of Aamir Ageeb resulted in a review of how forced deportations are conducted in Germany and led to subsequent changes to the existing guidelines regulating the removal of deportees from German soil. The Federal Ministry of the Interior informed Amnesty International in a letter of July 1999 that a conference of police doctors and forensic doctors was called by the Ministry in June 1999 in order to examine the existing guidelines regulating forced deportations and to ensure that methods used pose no danger to the health and life of deportees. The CPT welcomed the new guidelines,⁶¹ introduced in March 2000, and recommended that they be made applicable throughout the country to all agencies entrusted with the enforcement of removal orders.⁶²

VI. FATAL SHOOTINGS BY POLICE

Since 1999 several incidents have come to the attention of Amnesty International, in which unarmed individuals were controversially shot dead by the police. In the two cases of fatal shootings highlighted below both victims were shot in controversial circumstances by police from the town of Nordhausen, Thuringia. The fatal shooting of the 62-year-old hill-walker, Friedhelm Beate, in his hotel room in a small village in Thuringia in June 1999 became a national scandal which was extensively reported in the German news media and was the subject of a documentary film.⁶³ None of the involved police officers were brought to task for the fatal shooting. More recently, however, charges of negligent homicide were filed against a police officer accused of shooting in the back and killing a 30-year-old man, René Bastubbe, in the town of Nordhausen, Thuringia in July 2002. There was concern in both cases that police officers discharged their firearms in circumstances in which there was either no imminent threat of death or serious injury, or it was questionable whether such a threat existed and whether less extreme measures could have sufficed.

As was stated in section II of this report, the right to life is fundamental in international law. Article 2 of the European Convention on Human Rights and Article 6 of the ICCPR enshrine this right and regulate the use of force by police officers (see section II (3) of this report). Article 2 of the European Convention on Human Rights stipulates that the force used must be “no more than absolutely necessary”. In addition, various international standards have been developed which regulate the use of force, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials. Both of these standards define the limited circumstances in which police officers may use force and firearms. Article 3 of UN Code of Conduct for Law Enforcement Officials states: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.” The Commentary accompanying Article 3 emphasizes that the use of force by law enforcement officials should be exceptional, particularly in relation to the use of firearms. It states: “The use of firearms is

⁶¹ *Bestimmungen über die Rückführung ausländischer Staatsangehöriger auf dem Luftweg.*

⁶² CPT/Inf (2003) 20, 12 March 2003 - paragraph 24.

⁶³ *Todesschüsse: Eine Fahndung mit Folgen* by Steffen Lüddermann and Hanno Brühl.

considered an extreme measure ... In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.” Similarly, Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” These principles have also been incorporated into Federal Law as well as the laws of the individual German *Länder*.⁶⁴ Thus when police deliberately shoot and kill a person who poses no deadly threat, they are violating the victim's right to life, amounting to the arbitrary deprivation of life. What follows is a summary of the two incidents, referred to above:

(A) The fatal shooting of René Bastubbe

On 9 October 2003 Mühlhausen District Court in Thuringia acquitted a 31-year-old police officer of the negligent killing of 30-year-old René Bastubbe in Nordhausen in July 2002. The family of the deceased man and the prosecuting authorities promptly declared their intention to appeal against the judgment, the result of which was not known at the time of writing.

René Bastubbe was fatally shot by the police officer shortly after 4.30am on 28 July 2002 on *Hundgasse* in the town centre of Nordhausen, Thuringia. Prior to the incident, René Bastubbe and a 23-year-old friend had spent the evening celebrating a friend's birthday and had gone to a cigarette vending machine, located on the corner of *Töpferstraße* and *Hundgasse*, in order to buy cigarettes. After the men put money into the vending machine, however, it was said to have failed to vend the cigarettes. Out of frustration René Bastubbe and his friend began banging the machine. René Bastubbe then struck the vending machine with a cobble stone taken from a pile of cobble stones located nearby. Unsurprisingly, their actions produced a great deal of noise and woke a number of local residents, who were sleeping at the time. As a result of the disturbance local residents informed Nordhausen Police Inspectorate about the incident.

Reports indicated that, before two police officers arrived at the scene of the incident, the two men had fled. They were reported to have gone around the back of a building and climbed on to a roof. The two men were then said to have climbed down from the roof and hid behind a street kiosk. The fatal shooting took place after René Bastubbe and his friend were found by two police officers hiding behind the kiosk. A female police officer

⁶⁴ For more information see Germany's fifth periodic report on its obligations under the ICCPR, UN Doc. CCPR/C/DEU/2002/5 - paragraphs 50-56.

successfully detained René Bastubbe's friend and handcuffed him to a metal fence. The second male police officer then attempted to detain René Bastubbe. At the time the female police officer stayed near to René Bastubbe's handcuffed friend, who, owing to being handcuffed to the metal fence, did not see the shooting or his friend throw cobble stones at the police officer. According to various news reports, however, René Bastubbe forcibly resisted the efforts to detain him and threw one or more cobble stones at the male police officer. As René Bastubbe bent down to pick up another cobble stone, the police officer shot him in the back from a distance of several metres with so-called "man-stopping" ammunition. The bullet entered René Bastubbe's lower back, passed through several organs and severed a major artery before becoming lodged in his collar-bone. He died as a result of massive blood loss.

In late April 2003 Mühlhausen Public Prosecutor's Office filed the charge of negligent homicide against the police officer accused of fatally shooting René Bastubbe. Amnesty International wrote to the Ministry of the Interior of Thuringia in early July 2003 requesting to be informed of the outcome of any criminal and disciplinary proceedings taken against the police officer as a result of a trial. The organization was concerned that the fatal shooting of René Bastubbe did not appear to be necessary or proportionate to the object to be achieved at hand, namely the detention of René Bastubbe. Moreover, in the absence of any apparent immediate threat to life, the police officer did not appear to resort to less extreme measures in order to detain him, such as attempts to de-escalate or better manage the situation by calling for police reinforcements.

Mühlhausen District Court, however, ruled on 9 October 2003 that the accused police officer had acted in self-defence. It emerged during the trial that René Bastubbe had thrown two cobble stones at him on the night of 28 July 2002. The police officer stated during the trial that he believed that he was in danger and the only effective means of stopping a further attack was to shoot at René Bastubbe's legs. However, as the police officer fired a shot at René Bastubbe's legs in order to end the attack, the suspect bent over and was unintentionally hit in the lower back by the discharged bullet. It transpired, however, that no warning shots were fired during the incident. According to news reports, the prosecuting authorities had argued that, although the police officer had acted in self-defence, his reaction had been excessive and he could have taken other steps to defend himself such as withdrawing from the incident scene. During the trial the prosecuting authorities had originally called for an eight-month suspended prison sentence and a fine.

Amnesty International was also concerned about allegations that in the early hours of 28 August 2002 René Bastubbe's brother, Gilbert Barnekow, was unlawfully deprived of his liberty, ill-treated and verbally threatened by police officers in Nordhausen. Since his brother's death, Gilbert Barnekow has actively campaigned on behalf of his brother and repeatedly called for the controversial circumstances surrounding the shooting to be resolved. Gilbert Barnekow and three friends reportedly met at a café in the immediate vicinity of where the shooting took place in order to commemorate one month since the death. After the café had closed, the group decided to drive to Nordhausen's main cemetery to visit René Bastubbe's grave. However, en route to the cemetery their vehicle was stopped by a police patrol car and all four passengers were asked for identification. As Gilbert Barnekow did not

have any identification on him, he was handcuffed and detained. Gilbert Barnekow stated that, after he was driven away by two police officers, they refused to inform him of the reason for his arrest or where he was being taken. He also alleged that the police officers made insulting comments about his deceased brother designed to intimidate him. One of the police officers allegedly asked him “how it felt to have no brother” and told him that “there was nothing left for him and his family in Nordhausen”. He was also allegedly asked whether he had seen their new police cells and was told that he “would definitely feel at home there and would most certainly like them”.

The police vehicle eventually arrived at Gilbert Barnekow’s home, where the police officers allegedly demanded that he give them his house keys so that they could search his flat. However, he reportedly informed them that he had left them in his friend’s car. Although the police officers did not appear to believe him at first, one of the police officers rang on a neighbour’s door bell at approximately 3am. Gilbert Barnekow also alleged that, after repeatedly demanding that the police officers inform him of the reason for his arrest and for the visit to his home, one of the police officers thrust the palm of his hand into his face. Gilbert Barnekow stated that he felt afraid and decided not to ask any further questions. The police officers then reportedly took him to the police station in Nordhausen, where he was breathalysed. He was released without charge at around 4am on 28 August.

Disturbingly, although Gilbert Barnekow was not charged with any offence, an article appeared in a 30 August 2002 edition of the tabloid newspaper, *Bild*, giving an account of his arrest two days previously. The article appeared under the title: *One Month After Fatal Shooting - Now Brother Arrested*.⁶⁵ Gilbert Barnekow alleged that the details of his arrest were given to the newspaper by Nordhausen Police in order to discredit him. He subsequently informed his lawyer about the incident and lodged complaints against the police officers of bodily harm, unlawful deprivation of liberty, coercion and insulting behaviour. In its letter to the Ministry of the Interior of Thuringia Amnesty International requested to be informed of the findings of any investigation initiated into these serious allegations. The Ministry informed the organization in a letter of 25 September 2003 that the allegations had been the subject of an investigation, which had been discontinued in mid-March 2003. The Ministry also stated that the police had not informed *Bild* newspaper of the details of his arrest.

(B) The fatal shooting of Friedhelm Beate

René Bastubbe has not been the only person to have been fatally shot in controversial circumstances by Nordhausen police in recent years. Police officers from Nordhausen also shot dead Friedhelm Beate in the village of Heldrungen, Thuringia, in the late evening of 27 June 1999. The pensioner from Cologne was on a walking holiday in Saxony and Thuringia and chose to stay overnight in a hotel in Heldrungen. A waitress employed at the hotel reportedly called the police in Dessau about Friedhelm Beate after seeing the crime program ‘*Kripo live*’ on the *MDR* television channel. The television program reported on the convicted

⁶⁵ *Ein Monat nach dem Todesschuss, Jetzt wurde sein Bruder verhaftet.*

murderer, Dieter Zurwehme, who failed to return from a day release to Bielefeld prison in North Rhine-Westphalia in early December 1998, and who, after his recapture, was later convicted of having murdered two elderly couples in the town of Remagen. The employee called the police in Dessau shortly after 8.30pm stating that a person of the same description was in the hotel. The police in Dessau were then said to have informed colleagues in the town of Nordhausen, approximately 40 kilometres to the north of Heldrungen, of the information they had received. Police in Nordhausen subsequently sent two plain clothed police officers to Heldrungen to ascertain the identity of the man in the hotel. Controversially, neither police officer possessed a photograph of the wanted murderer, Dieter Zurwehme, or knew what he looked like. In addition, the police also neglected to check Friedhelm Beate's identity and call his family in Cologne, who would have been able to confirm that he was staying at the hotel.

The two plain clothed police officers from Nordhausen arrived at the hotel in Heldrungen late in the evening of 27 June 1999. Shortly after 11pm the owner of the hotel reportedly knocked on the door of bedroom 11, where Friedhelm Beate was sleeping. The two plain clothed police officers were said to have stood before the door with their firearms drawn when Friedhelm Beate opened the door. It was thought that Friedhelm Beate, who was hard of hearing, may have believed that the armed men intended to rob him. As he attempted to close the partially opened door two shots were fired by the police officers, one of which directly reportedly hit Friedhelm Beate in the heart. The two police were said to have withdrawn from the immediate crime scene and informed police at Nordhausen about the incident. A special police detachment arrived approximately 70 minutes later and entered the room to find Friedhelm Beate lying dead on the floor in a pool of blood. It was alleged that only then did the police officers call for medical assistance, which reportedly arrived at around 2am.

In a December 1999 letter to the German authorities Amnesty International expressed concern that Friedhelm Beate may have died as a result of unlawful use of firearms by the two police officers. The Ministry of Interior of Thuringia responded in March 2000, stating that criminal proceedings against the two police officers on suspicion of negligent homicide had been terminated by Erfurt Public Prosecutor's Office in December 1999. The investigation had not found that the police officers had acted in a culpable manner. No detailed reasons were given in the letter for the decision. However, according to several press reports, the accused police officers claimed that they had unintentionally shot Friedhelm Beate. An expert evaluation of the incident reportedly concluded that the police officers, acting under stressful conditions and believing that the escaped murderer Dieter Zurwehme was in the hotel room, unintentionally shot Friedhelm Beate as a result of a reflex reaction. Erfurt Public Prosecutor's Office therefore discontinued the charges against the two police officers.⁶⁶

⁶⁶ Amnesty International wrote to Erfurt Public Prosecutor's Office in April 2003 requesting a copy of its decision to discontinue criminal proceedings against the two police officers in December 1999. Erfurt Public Prosecutor's Office informed the organization in a letter from June 2003 that, due to reasons of the confidentiality of the accused, it could not provide Amnesty International with a copy of its December 1999 decision.

Since the prosecuting authorities' initial refusal to file charges against the two police officers, the family of Friedhelm Beate have striven to appeal the decision. Friedhelm Beate's brother, Erdmann Beate was quoted in mid-2002 as stating: "We were deeply disappointed, even shocked. It was then we became really enraged because this argument, which was put forward, was simply incomprehensible, unintelligible to us." He added: "This is how you lose faith in the state. My brother was a public servant, I'm a public servant. My brother was shot by public servants, so it makes you think what's gone wrong here? Are the police going to carry out their duties in this Rambo-like manner? I don't know. It's absolutely incomprehensible to me."⁶⁷ The lawyer representing the Beate family has reportedly attempted to have the criminal investigation re-opened in mid-February 2003 on the basis that the police control centre in Nordhausen had made a vital tactical mistake by not checking Friedhelm Beate's identification prior to deploying the two plain clothed police officers to Heldrungen. By the end of October 2003, however, Amnesty International had no information regarding the outcome of this appeal.

VII. NATIONAL HUMAN RIGHTS INSTITUTIONS

(1) National human rights institutions

Amnesty International's concern about the manner in which investigations into alleged police ill-treatment and excessive use of force have been conducted in Germany was shared by the UN Human Rights Committee, the UN Committee against Torture and the European Committee on Racism and Intolerance. In 1996 the UN Human Rights Committee expressed concern that "...there is no truly independent mechanism for investigating complaints of ill-treatment by the police" and recommended "... the establishment of independent bodies throughout the territory of the State party for the investigation of complaints of ill-treatment by the police".⁶⁸ In May 1998 the Committee against Torture stated it was concerned about both the large number of reports of police ill-treatment and "... about the apparently low rate of prosecution and conviction in the alleged incidents of ill-treatment by the police, especially of people of foreign descent".⁶⁹ In the light of the apparent difficulties to secure convictions of police officers who were alleged to have ill-treated detainees, the Committee against Torture recommended "... that both internal disciplinary measures against offending police officers and the external prosecutorial and judicial measures be significantly strengthened to ensure that in future all police officers accused of ill-treatment of domestic and foreign nationals alike are brought to justice".⁷⁰ More recently, concerns about the impartiality of investigations were echoed by the European Committee on Racism and Intolerance, which, in view of the "wide discrepancy" between allegations of ill-treatment and criminal convictions of police

⁶⁷ *Das MDR Magazin*, 14 June 2002.

⁶⁸ See UN Doc. CCPR/C/79/Add.73, 8 November 1996 - paragraph 11.

⁶⁹ UN Doc. A/53/44, 11 May 1998 - paragraph 188.

⁷⁰ UN Doc. A/53/44, 11 May 1998 - paragraph 192.

officers, recommended in 2001 that "... an independent body should be charged with the task of enquiring into all cases of ill-treatment by police officers, especially of members of minority groups".⁷¹

The independent bodies referred to by the UN Human Rights Committee and the European Committee on Racism and Intolerance exist in a number of countries and are commonly referred to as national human rights institutions. These include human rights commissions, institutes and ombudspersons, the encouragement for the establishment of which has come from the UN. Amnesty International has also made its own recommendations for the effective protection and promotion of human rights through such national human rights institutions.⁷² Although the national human rights institutions found in different countries have varying areas of competence and degrees of power, their establishment should ideally be to promote and protect human rights, through effective investigation of broad human rights concerns and individuals' complaints about human rights violations they have suffered, and through making recommendations accordingly. The UN Principles relating to the status of national institutions, known as the Paris Principles,⁷³ have stated that in order to fulfil these vital functions national human rights institutions should have precisely defined powers to investigate on their own initiative situations and cases of reported human rights violations. Individual complainants, their lawyers, relatives or others acting on their behalf, including non-governmental organizations, should also be able to bring their complaints directly to such bodies. Where the police have made an inconclusive or otherwise unsatisfactory investigation, national human rights institutions should undertake a prompt, thorough, effective and impartial investigation and not be hampered or otherwise inhibited by following the conclusions of a previous investigation. An important part of the work of a national human rights institution should also be to collect and compile statistics and information in order to obtain an accurate picture of human rights violations in the country. Statistics should detail the nature of all complaints, how and when they were investigated, the findings, and follow-up to recommendations.

(2) The German Institute for Human Rights

In December 2000 the German Parliament unanimously voted in favour of the establishment of the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*), which came into being in March 2001. According to the Institute's statutes, the overall aim of the institute is to "provide information about the human rights situation in Germany and abroad and contribute to the prevention of human rights violations and the promotion and defence of human rights".⁷⁴ It is active in the following six areas of human rights related work:

⁷¹ CRI (2001) 36, 3 July 2001 - paragraph 33.

⁷² *National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights* (AI Index: IOR 40/007/2001).

⁷³ Adopted by the UN Commission on Human Rights Resolution 1992/54.

⁷⁴ For more information please refer to the German Institute for Human Rights' website: www.institut-fuer-menschenrechte.de

- Information and documentation:
The Institute provides human rights information and documentation via the internet, including links to various legal libraries, and through a reference library;
- Research:
The Institute collaborates with academic and political institutions and foundations to undertake human rights research, the general aim of which is to advance human rights work;
- Consultation:
The Institute provides advice to representatives of political and civil society engaged in human rights. Human rights seminars and other events are organized by the Institute to promote a dialogue and an exchange of ideas on human rights related issues between various academic, political and civil society actors;
- Human rights education in Germany:
The Institute supports other organizations involved in human rights education. However, it has the additional function of drawing-up programs of human rights for certain professional groups, such as the police and personnel employed in prisons and psychiatric institutions, and the establishment of national curricula for schools.
- International cooperation:
The Institute cooperates with international organizations to promote the exchange of knowledge and experience in the field of human rights. The international work of the organization involves liaising with similar institutions abroad and international government organizations such as the European Union, the Council of Europe, the OSCE and the UN human rights mechanisms.
- Promotion of dialogue and cooperation within Germany:
The Institute gives assistance to other governmental and non-governmental organizations involved in the field of human rights.

In the absence of any mandate to monitor and investigate complaints of human rights violations the German Institute for Human Rights essentially has the functions of compiling, disseminating and exchanging human rights related information and research, promoting dialogue between various actors in society and promoting human rights education. While such functions are commendable and of great importance, there nevertheless exists the need to address persisting concerns about investigations into allegations of police ill-treatment and excessive use of force. The German Institute for Human Rights clearly does not have the powers and resources to carry out this function.

(3) The need for an independent monitoring mechanism

Disappointingly, the German government has repeatedly rejected any suggestion that an independent body be set up to monitor and investigate allegations of police ill-treatment. In connection with the UN Human Rights Committee's 1996 recommendation to this end Amnesty International wrote to the German authorities seeking information whether Germany was considering implementing the recommendation. The Head of the Human Rights Division in the German Foreign Ministry informed Amnesty International in May 1997 that the German Government saw "no need for additional measures for regulating the investigation and prosecution of allegations of ill-treatment by police". More recently, Germany's fifth periodic report to the UN Human Rights Committee reiterated this position. The report stated: "The establishment of a further independent mechanism at the national level to investigate suspected cases of police ill-treatment at the level of the regions ... does not appear urgently necessary in view of the diversity of other mechanisms".⁷⁵

Amnesty International believes that there is a need for an independent body in Germany both to collect and compile comprehensive statistics about human rights violations, particularly complaints of police ill-treatment and the excessive use of force (see Amnesty International's recommendations and section I (1) of this report) and, when necessary, to investigate patterns of human rights violations, or individuals' complaints thereof. The power of investigation would be especially relevant to particularly serious reports of ill-treatment and the excessive use of force or in cases where an investigation was deemed to have been inconclusive or otherwise unsatisfactory, of which there are several examples highlighted in this report. An independent body would also analyse the factors which had contributed to a given human rights violation or to the failure of an investigation and make relevant recommendations. The federal or state government in question would undertake an obligation to respond, within a reasonable time, to any findings, conclusions and recommendations made by that body. The essential purpose of such a body would be to prevent the re-occurrence of specific human rights violations and ensure justice.

Conclusion and recommendations

Although ill-treatment and torture and threats thereof are explicitly prohibited by international and German law, such allegations have regrettably persisted. For reasons which have already been referred to in this report, official statistics on the issue of ill-treatment are extremely inadequate and frequently allow only the most limited of insights into the problem. Moreover, there are also very good reasons why people with well-founded complaints of ill-treatment fail to make these known and take legal action. In this sense, the true extent of the problem of police ill-treatment is unknown.

⁷⁵ UN Doc. CCPR/C/DEU/2002/5, 4 September 2002 - paragraph 151.

Irrespective of these factors, there is, nevertheless, evidence to suggest that police ill-treatment affects a minority of those persons taken into police custody in contemporary Germany. The majority of encounters between the police and the public clearly do not result in allegations of police ill-treatment. Specialist human rights monitoring bodies like the European Committee for the Prevention of Torture, which has unlimited access to places of police detention, has not encountered large numbers of such allegations during its visits to Germany. In addition, while such allegations have periodically appeared in the German news media and been publicized by domestic non-governmental organizations, they have not been numerous or widespread.

This report has highlighted only a relatively small number of allegations of police ill-treatment, some of which were extremely disturbing and resulted in serious injury as well as death. Alleged ill-treatment usually occurred either at the time of arrest or in police custody. There were also persisting allegations, albeit fewer, of the ill-treatment and excessive use of force against foreign nationals subjected to a removal order from Germany. Unsurprisingly, the incidents have often had much longer-term physical and psychological effects on the victims.

Amnesty International is concerned that for many of the victims the task of bringing the accused police officers to justice has been an arduous and protracted process. In such cases, complainants often had to wait a disproportionate length of time, many months, sometimes even years, for the prosecuting authorities to bring charges against the accused police officers. Sometimes charges were only brought after victims appealed against an earlier decision to discontinue criminal proceedings against the police. It was not unusual for many more months than to pass before the accused police officers came to trial. Clearly, more should be done to shorten the length of unreasonably protracted criminal investigations into alleged police wrongdoing and to ensure that police officers are brought to justice within an acceptable period of time.

Amnesty International is also concerned that when police officers accused of ill-treatment have been convicted by a court, punishments have not always been commensurate with the gravity of the crime. Relatively nominal penalties, such as a suspended sentence and a fine, have been imposed on police officers whose victims suffered serious injury. Only very rarely do police officers, who are convicted of human rights abuses, receive custodial sentences. If unlawful acts of police violence against detainees are to be deterred, the seriousness of such acts must be reflected in both the criminal and disciplinary measures taken against the offending police officers. The UN Special Rapporteur on torture has previously underscored the importance of appropriate sentencing, stating: "Sentences should be commensurate with the gravity of the crime."⁷⁶

Of particular concern is the failure of the prosecuting authorities to bring most complaints of police ill-treatment to the courts. Not all complaints of police ill-treatment will, of course, be genuine and will subsequently be rejected as untrue or exaggerated by the

⁷⁶ UN Doc. E/CN.4/1999/61/Add.1, 27 January 1999 - paragraph 113 (g).

prosecuting authorities. Nevertheless, for reasons which have already been referred to in this report, Amnesty International is concerned that potentially credible complaints of ill-treatment may also run the risk of being discontinued by the prosecuting authorities if the latter applies too restrictive an interpretation of the legal concept of “sufficient suspicion” to determine whether a crime has been committed. A number of complaints highlighted in this report were discontinued by the prosecuting authorities even though there was evidence - such as serious injury - to suggest that an unlawful act of violence may have been committed by police officers.

There consequently needs to be greater recognition by the prosecuting authorities of the hurdles faced by complainants to substantiate allegations of police ill-treatment. Unlawful acts of violence by police officers often occur in isolation where there are no independent eyewitnesses to counter the police’s version of events. The victim’s word is therefore frequently contradicted by the word of one or more police officers. Often an injury is the only available evidence to indicate that a complainant may have been ill-treated by police. The prosecuting authorities should consequently exercise great care when considering such evidence. All too often, for example, public prosecutors appear to accept the police’s version of events that injury resulted from the complainant’s resistance to their attempts to effect an arrest. Alternatively, injuries are poorly accounted for. Amnesty International believes that, with this latter caveat in mind, if a criminal investigation establishes that a complaint is credible, it should be left to a court to assess the veracity of conflicting or contradictory testimony.

In a number of cases highlighted in this report police counter-charges of resistance to state authority or insulting behaviour were lodged by the police against complainants of police ill-treatment. To date, several of these counter-charges have been rejected as groundless. The German authorities should take effective measures to address Amnesty International’s long-standing concerns that the institution of legal proceedings against a high proportion of complainants might effectively dissuade victims of ill-treatment from seeking redress and reparation and would amount to intimidation, as defined by the UN Convention against Torture.

2004 is an important year for Germany. Two highly authoritative UN human rights treaty bodies - the UN Human Rights Committee and the UN Committee against Torture - will consider whether Germany is fulfilling its international human rights obligations under both the International Covenant on Civil and Political Rights and the UN Convention against Torture. It is striking as well as disappointing that many of the concerns expressed in this report were previously echoed by both of these expert bodies respectively in 1996 and 1998. Amnesty International is therefore calling on the German authorities to address these concerns and implement the following measures to counter acts of alleged police ill-treatment and excessive use of force:

The absolute prohibition of torture and ill-treatment

- All senior police officers should be reminded of the absolute prohibition of torture and any other cruel, inhuman or degrading treatment;
- Senior police officials should deliver the clear message to their subordinates that torture or ill-treatment, or threats thereof, of people deprived of their liberty is absolutely prohibited and totally unacceptable and will be the subject of severe sanctions;
- Immediate criminal and disciplinary measures should be initiated against any police officer, irrespective of their rank, deemed to have violated the prohibition of torture.

The right to life

- Independent, prompt and impartial investigations should be carried out into all deaths in police custody, including fatal police shootings;
- Perpetrators of unlawful killings should be brought to justice;
- The families of victims should receive reparations, including fair and adequate compensation.

Statistics on complaints of police misconduct

- A central governmental agency should maintain and publish regular, uniform and comprehensive statistics on complaints about misconduct, including ill-treatment, by officers of the individual *Länder* and federal police authorities. These figures should include: information on the number of complaints of ill-treatment made against police officers over a specified period of time, the steps taken in response to each complaint and the outcome of any criminal and disciplinary investigations conducted into alleged police ill-treatment; statistics on allegations of racist abuse; and statistics on the national origin of complainants.

The investigation and prosecution of allegations of police ill-treatment and excessive use of force

- All allegations of police ill-treatment should be subject to prompt, thorough and impartial investigation;

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- The prosecuting authorities should themselves interview the victim, the accused police officers and any other eyewitnesses and, where appropriate, should examine the scene of the alleged ill-treatment;
- Steps should be taken by the prosecuting authorities to shorten unreasonably protracted criminal investigations into allegations of police ill-treatment and excessive use of force;
- The prosecuting authorities should remain sensitive to the difficulties faced by victims of alleged ill-treatment to substantiate their complaints. If a criminal investigation establishes that the allegations of the complainant are credible, it should be left to a court to assess the veracity of conflicting or contradictory testimony;
- Any police officer reasonably suspected of responsibility for serious human rights violations should be brought to justice and sentences should be imposed which are commensurate with the gravity of the crime;
- The German authorities should take effective measures to ensure that people who bring complaints of ill-treatment against police officers are protected against intimidation. Such measures should include the careful scrutiny by the prosecuting authorities of police charges that detainees have resisted state authority, particularly those which are filed only after complaints of police ill-treatment are brought. Where complaints are filed simultaneously by a detainee alleging police ill-treatment and by police officers alleging resistance to state authority, the complaint against the victim should be suspended until the result of the investigation into the behaviour of the police officers concerned has been completed;
- Victims or their families should receive reparations, including fair and adequate compensation, and where relevant, the means for as full rehabilitation as possible;
- The German authorities should ensure full training of police officers on the legal and proportionate use of force.

Independent monitoring mechanisms:

- In accordance with past United Nations and Council of Europe recommendations, the German government should take steps to establish an independent body with effective powers to monitor and investigate complaints of serious police misconduct, including alleged police ill-treatment and excessive use of force, throughout the territory of the Federal Republic of Germany, including alleged violations committed by Federal as well as state police and prison officials;
- The independent body should be able to receive complaints of ill-treatment and excessive use of force from any individual regardless of their status;

- The independent body should have the necessary powers to address failed investigations into alleged police ill-treatment and excessive use of force effectively;
- The German authorities should immediately sign and ratify the Optional Protocol to the Convention against Torture and establish a domestic visiting mechanism to inspect all places of detention in Germany.

Safeguards against ill-treatment during forced deportations

- The recommendations made by the European Committee for the Prevention of Torture regarding the treatment of asylum-seekers during forcible deportation operations should be fully implemented, particularly that police officers acting as escorts during deportations should use no more force than is strictly necessary;
- All allegations of ill-treatment by Federal Border Police should be subject to prompt, thorough and impartial investigation. Any police officers who assist prosecutors in such investigations, must not be related to the police officers/service under investigation, as recommended by the CPT;
- The authorities should ensure that the new internal instructions of 15 March 2000 on the removal by air of foreign nationals by officers of the Federal Border Police are implemented in practice;
- The authorities should take all possible measures to safeguard the dignity and human rights of deportees and consider implementing Recommendation 1547 (2002) of the Parliamentary Assembly of the Council Of Europe, particularly the proposed establishment of independent monitoring systems for expulsion procedures by appointing observers, mediators or ombudsmen.

Human rights education

The cases of alleged police ill-treatment and excessive use of force documented in this report indicate that the guarantee of human rights is not anchored firmly enough in the basic and further training of police officers. Amnesty International therefore believes that there is a pressing need for Germany to modify its basic and further training curricula for police officers. In doing so, the following issues should be taken into account:

- Human rights education must be an integral part of the basic and further training of all police officers. Since the training of police officers, particularly of mid-ranking police officers, is organized internally within the police, external experts and instructors should be engaged for the purposes of training police officers in the area of human rights. Representatives of social and charitable institutions should also be involved in training, while direct exchanges between police officers and

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representatives of refugee, asylum, and human rights organizations should take place during training;

- Human rights must be an integral part of all areas of police training such as for example police operations, policy, criminology and law;
- Legal training should also stress the importance of international human rights treaties and the obligations they bestow on Germany, including the European Convention on Human Rights, UN Convention against Torture and the ICCPR. The role of the European Court of Human Rights should also be emphasized in training;
- Complaints procedures and mechanisms which allow police officers to bring to the notice of their superiors behaviour which is contrary to the accepted norms of policing must be central themes in police training. The lodging of complaints by police officers against colleagues who violate national and international human rights standards must not result in sanctions or discrimination against the complainant.