



UNKNOWN ASSAILANT

INSUFFICIENT INVESTIGATION
INTO ALLEGED ILL-TREATMENT
BY POLICE IN GERMANY

AMNESTY
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cover photo: Under a railway bridge in Berlin 2010. In similar surroundings, JM (one of the cases in this report) was apprehended by plain-clothes officials as he went home from work in January 2008.

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GLOSSARY

Convention against Torture	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT	Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or punishment
CPC	Criminal Procedure Code
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
NGO	Non-Governmental Organization
PPO	Public Prosecution Office
UNHCR	United Nations High Commissioner for Refugees (the UN Refugee Agency)

INTRODUCTION

The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions.

Committee for the Prevention of Torture (CPT), General Report 14, 2004, para.25

Amnesty International has continued to receive reports that individuals have been subjected to human rights violations, including deaths in custody, excessive use of force and other forms of cruel, inhuman or degrading treatment (ill-treatment) by police officers in Germany since it published its last report on this issue in 2004.¹

This report, with Germany back in the spotlight, highlighted cases of alleged ill-treatment by police officers, including instances of excessive use of force, and deaths in custody or following use of force by the police.

This report also raises concerns about the failure of the authorities to ensure that credible allegations that police have engaged in human rights violations are adequately investigated. Amnesty International is concerned that this is leading to a lack of accountability and a climate of impunity.

Amnesty International recognizes that police officers in Germany perform a difficult and dangerous task, often at great personal risk, and that the great majority of officers fulfil their duties professionally and lawfully. However, the organization believes it is also necessary to recognize that mistakes and misconduct can and do take place. When there are allegations or other credible information that human rights violations may have been committed by police officers, authorities are under an obligation to carry out prompt, thorough, independent and impartial investigations. Disciplinary measures should be taken as appropriate, and officers responsible for criminal conduct must be brought to justice in full and fair proceedings. Moreover, victims have the right to an effective remedy and reparation, including restitution, rehabilitation, satisfaction, compensation, and guarantees of non-repetition.

Amnesty International's research reveals that, regrettably, the procedures for investigating allegations of ill-treatment, including excessive use of force, by police officers are still failing to live up to the standards required by human rights treaties to which Germany is a party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), the International Covenant on

Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). In many of the cases examined by Amnesty International, the investigations lacked sufficient thoroughness. In other cases, the investigations have not been carried out promptly and in some instances, doubts have emerged about the independence and impartiality of the prosecuting authorities. Moreover, Amnesty International is concerned that police officers are still not obliged to visibly wear some form of identification (allowing for their individual identification) at all times when they are carrying out law enforcement functions such as arrest and detention, and including when they are using force in doing so. In some of the cases which Amnesty International researched, such identification would likely have facilitated the establishment of the identity of police officers who were alleged to have been involved in ill-treatment.

Firstly, this report will give a description of three cases where people have died in custody or following the use of force by the police and 12 other cases of alleged ill-treatment. Subsequently, concerns about reported failings in the investigation into most of these cases are highlighted.

This report does not claim to be a comprehensive record or analysis of allegations of ill-treatment or other abuses by police in Germany. It describes a range of cases of alleged police misconduct Amnesty International has researched since it published its earlier report in 2004.

METHODOLOGY

This report is based on research carried out by Amnesty International since 2004. Interviews have been conducted with alleged victims (including, in the case of death, surviving family members), lawyers, and representatives of the police, Public Prosecution Offices and judges. In some cases, Amnesty International also requested information in writing from the police, Public Prosecution Offices and governments of the 16 laender (states) in Germany. Information was also obtained from reports of discussions in the parliaments of different laender and academic research, as well as reports from inter-governmental and non-governmental organizations (NGOs) concerned with human rights, refugees and migrants, and the media.

Since 2004 the organization has been contacted by 869 people who alleged they were victims of police abuse. The organization carried out further research on 138 of these reported cases. Out of these, this report highlights 15 cases, in 12 of which there was alleged ill-treatment by police, including excessive use of force; in three cases people died following alleged unlawful police action or inaction. Most of the cases outlined came to light as a result of individuals or relatives contacting Amnesty International directly.²

DEVELOPMENTS SINCE 2004

Since the publication of its last report on police ill-treatment in Germany, in 2004, Amnesty International has noted that some positive steps have been taken in law reform and reform of administrative practice.³

Among them, as of 1 January 2009, all Public Prosecution Offices are required to collect statistics about criminal investigations carried out by the Public Prosecution Offices against police officers related to alleged cases of intentional killings, bodily injury in public office⁴

and abandonment⁵ according to sections 211, 212, 221, 340 of the Criminal Code as well as unlawful imprisonment, coercion, forcing someone to make a statement and a number of other criminal offences.⁶ As of 12 April 2010, data for the first year has not yet been published.⁷

In addition, Germany ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2008. It obliges, under Article 19, states to set up independent national preventive mechanisms to examine the treatment of people in all places of detention, make recommendations to government authorities to strengthen protection against torture or other ill-treatment, and comment on existing or proposed legislation. Germany has established a national preventive mechanism which came into operation in July 2009.⁸ It consists of an honorary director, who works on a voluntary basis, and one paid research assistant; they are in charge of monitoring all places of detention at the federal level. At the laender level, it is proposed that a laender commission consisting of four honorary members will be responsible for the monitoring. As of 12 April 2010, the laender commission had not been formed because the treaty between the Federation and the laender had still not been ratified by all laender parliaments. Amnesty International is concerned that this mechanism is not adequately resourced to carry out its tasks effectively; without adequate resources, the task of monitoring all places of detention, whether at federal or laender level, will not be achievable. Given this situation, the UN Special Rapporteur on torture stated that:

*"This mechanism is evidently unable to ensure complete geographic coverage of all places of detention. Such approach to the implementation of OPCAT is counter-productive since it does not take the problem of torture and ill-treatment in detention seriously and sets a bad example for other States."*⁹

UPDATE ON CASES HIGHLIGHTED IN THE 2004 REPORT

In two of the cases in the 2004 report where people died as a result of police ill-treatment, the police officers concerned were convicted, and procedural and administrative changes were introduced with a view to preventing recurrence.

Aamir Ageeb died of asphyxiation as a result of ill-treatment by police officers when they attempted to forcibly remove him from Frankfurt am Main to Khartoum in Sudan in 1999. In October 2004 the three police officers involved in the ill-treatment of Aamir Ageeb were each convicted of causing bodily injury resulting in death according to section 340 in conjunction with section 227 of the Criminal Code and received a nine-month suspended prison sentence.¹⁰ In addition, each of the officers was ordered to pay €2,000 compensation to the victim's family in October 2004. In the oral explanation of the judgment, the judge underlined that the behaviour of the perpetrators was aggravated by failures of the whole official apparatus of the Federal police, right up to the highest positions. He strongly criticized the lack of training and lack of knowledge of the risk of positional asphyxia. In addition, he emphasized that there had been blatant mistakes in the regulation of forcible removals and that the perpetrators' superiors were also responsible. The three police officers concerned were not removed from office but are no longer involved in forcible removals.

Following the death of Aamir Ageeb, the Federal police reviewed their procedures and practices for the forcible removal of people from Germany. It introduced police internal

guidelines in 2000 in which it defined the permissible use of force placing strict limitations on the use of force and reformulating the principle of proportionality. Particular emphasis was placed on the principle that forcible removals of individuals are not to be carried out at any cost.¹¹ These guidelines were further reviewed in 2005. A further positive step regarding forcible removals was the establishment of monitoring organizations at the international airports in Düsseldorf, Frankfurt am Main and Hamburg under the auspices of civil society bodies. The monitoring of such removals is carried out with the cooperation of the Federal Police. At Düsseldorf International Airport, since 2001, a part-time deportation supervisor has had the right to monitor all forcible removals in order to report any irregularities.¹² There are plans to introduce a similar mechanism at the Berlin airport as well. There are no comparable institutions aimed at protecting the rights of migrants during the process of forcible removals at other airports.

The second case was that of Stefan Neisius, who died in May 2002, 13 days after he fell into a coma as a result of being repeatedly kicked and hit by a group of police officers while he lay handcuffed on the floor of the Eigelstein police station in Cologne. The six police officers involved in his ill-treatment were convicted to suspended prison sentences of between 12 and 16 months for bodily injury in public office according to section 340 of the Criminal Code; they were later dismissed from the police force.¹³

The organization of the police station was restructured with the aim of changing the culture of complicity between police officers – which had been identified as one of factors leading to the ill-treatment of Stefan Nelsius. One change was to reorganize the teams of police officers who worked together in each shift, so that team members would change more frequently. Another was to introduce regular training in working with minorities and marginalized people.¹⁴

In two other cases reported in Amnesty International's 2004 report, the organization is concerned that the authorities' apparent reluctance to compensate the alleged victims for the injuries they suffered meant that it took several years before they obtained any compensation.

Josef Hoss allegedly suffered multiple injuries as a result of ill-treatment in December 2000 by a Special Deployment Command of the Cologne police. His injuries included two fractured ribs and multiple bruising and abrasions. The investigations into the conduct of the police officers involved were terminated because the Public Prosecution Office (PPO) claimed that the force used had not been excessive, because the police had had credible information before the incident that there were weapons stored in Josef Hoss' house. Josef Hoss' appeal against this decision was rejected by the Public Prosecutor General which is the superior authority to the PPO. Josef Hoss then lodged a complaint against the decision with the Higher Regional Court of Bonn. However, the court did not order the PPO to reopen the files because it considered the action to be appropriate in the light of the information the police had at the time. The court, though, did not examine the reliability of the source of the information on which the police had based their decision. In 2003, Josef Hoss filed a claim for damages before the Regional Court and, in 2008, the land of Northrhine-Westfalia agreed to pay him €600,000. Amnesty International is concerned about the length of proceedings and the reluctance of the land of Northrhine-Westfalia to compensate Josef Hoss for the injuries he suffered.

Amnesty International is also concerned about the length of the proceedings concerning the claim by Selim Demir for compensation following his alleged ill-treatment. Selim Demir had allegedly been ill-treated in May 2000 by two police officers en route to a police vehicle. While in 2002 the Court of First Instance found a 28-year-police officer guilty of bodily harm for kicking and hitting Selim Demir, the Court of Second Instance overruled that judgment and acquitted the police officer in 2004. This was on the grounds that there was too much divergence between the testimonies of the different people involved, so the court could not establish with certainty what had happened.¹⁵ The Berlin Higher Regional Court overruled Selim Demir's appeal against the acquittal on 1 September 2004.

On 12 February 2003 Selim Demir brought an action for damages against the land of Berlin. He claimed compensation for non-material damage amounting to €15,000. The Regional Court of Berlin partially accepted the request and ruled that the land of Berlin should pay compensation for non-material damage of €3,500. However, it also ruled that Selim Demir had to pay 86 per cent of the legal costs of the land of Berlin, which amounted to €1,823.18. The land of Berlin appealed against this judgment, but withdrew the appeal on 30 January 2009 after the Court of Second Instance had indicated that it would dismiss the appeal.

The proceedings in Selim Demir's civil case for damages against the land of Berlin took seven years.

HOW THE POLICE ARE ORGANIZED IN GERMANY

Germany is a federal state which consists of 16 regional states (laender). The laender have responsibility for the police, so there are 16 different police forces in Germany. Correspondingly, there are 16 sets of different laws governing the police. However, the Ministries of Interior of the laender collaborate closely on policing issues so the laws on policing are very similar in the different laender.

There is also a Federal level police force, which is responsible, among other things, for border control, law enforcement at airports and railway security. Federal policing is mainly governed by the Federal Police Act.

In the case of policing major events, such as demonstrations or international summit meetings such as the G8, one land may ask other laender and the Federal state for support. Where this occurs, their activities are governed by the law of the land where the demonstration or meeting is taking place.

DEATHS IN CUSTODY OR FOLLOWING USE OF FORCE BY POLICE

This chapter examines, in the light of international human rights standards, three cases of fatalities: two cases of death in custody and one case of a death in hospital after transfer from police custody.

THE RIGHT TO LIFE

The right to life is in international law enshrined in Article 6 of the ICCPR and Article 2 of the ECHR. The European Court of Human Rights (ECtHR) has underlined that Article 2 of the ECHR may be engaged not only in cases of intentional killing but also in situations where law enforcement officials are permitted to use force, but where the force used unintentionally results in the loss of life.¹⁶ In addition, the duty to respect the right to life enjoins states not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within their jurisdiction.¹⁷

States have a heightened obligation to respect and ensure the right to life of people in custody. The controlled nature of the custodial environment enables the state to closely control the conduct of its officials and prevent them from committing violations of the rights of people for whom it has assumed a heightened duty of protection by taking them into custody and so restricting their freedom of movement and capacity to protect themselves. The state's heightened duty and capacity to fulfil these obligations when they have deprived a person of their liberty and hold them in custody means that when someone dies in custody the burden of proof is on the state to show that it is not responsible. In the absence of such proof the state has an obligation to make reparations to the victim's family, even if the precise cause of death and the individuals responsible cannot be identified.¹⁸

According to the Standards of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), the CPT has stressed that the duty of care owed by the police to people in custody includes the responsibility to ensure their safety and physical integrity and accordingly that the proper monitoring of custody areas is an integral component of the duty of care assumed by the police. Appropriate steps must be taken to ensure that persons in police custody are always in a position to readily enter into contact with custodial staff. The CPT have in particular expressed concern about instances in which police cells are far removed from the offices or desks where police officers are normally present, and devoid of any means (such as a call system) to enable detainees to attract the attention of a police officer, with the risk that incidents such as violence among detainees, suicide attempts, or fires will not be responded to in good time.¹⁹ The ECtHR has emphasized that, in the case of people deprived of their liberty:

*...persons in custody are in a vulnerable position and ... the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, which obligation is particularly stringent where that individual dies.*²⁰

Oury Jalloh

On 7 January 2005, Oury Jalloh, an asylum-seeker from Sierra Leone, burned to death, after having been tied to a bed in a cell at Dessau police station in Saxony-Anhalt. Oury Jalloh was arrested on the morning of 7 January 2005 for allegedly harassing four women when he asked to use their mobile phones, despite having a mobile phone in his hand. According to the four women, he appeared to be very drunk and could hardly stand. When two police officers asked for his passport, Oury Jalloh started shouting at them. According to the police officers it was not possible to establish Oury Jalloh's identity, therefore he was apprehended and taken to Dessau police station.²¹

At the police station, the officers called a doctor. When the doctor arrived, he noticed that Oury Jalloh had consumed drugs as well as alcohol. He took a blood sample which indicated a blood alcohol level of 2.98 per mille, along with traces of cannabis and cocaine.²² Despite this, the doctor declared that Oury Jalloh could be taken into custody and recommended that he be restrained in order that he not injure himself. The two police officers then searched Oury Jalloh for dangerous items and took him to a cell in the basement in which he was tied to a flame resistant mattress with his arms and legs outstretched. His hands and feet were tied with restraints that were locked by keys to mountings that were fixed to the mattress at the bottom and at the sides of the mattress. He was still able to move his arms but not able to sit up.

According to the CPT Standards, a person deprived of their liberty who needs to be physically restrained should be kept under constant and adequate supervision. Furthermore, instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, nor should their application be prolonged, as a punishment. Finally, a record should be kept of every instance of the use of force against persons deprived of their liberty.²³ Contrary to these standards, Oury Jalloh was left alone in the cell located in the basement of the police station. The cell was connected by intercom to the office of the duty police officer. However, this officer turned down the volume of the intercom after Oury Jalloh was placed in the cell because he felt disturbed by the shouting of Oury Jalloh while talking on the phone²⁴. Only when his colleague insisted did he turn up the volume again.

The judgment of the Dessau regional court established that despite being tied down Oury Jalloh was able to grab a lighter from his pocket and set fire to the mattress. The court was convinced that it was possible for Oury Jalloh to tear the flame-resistant cover off the mattress and set fire to the inner foam plastic. The court was also convinced that Oury Jalloh had used a lighter to set fire to the mattress; however, it was not able to establish how he got hold of the lighter even though he had been searched for dangerous items before being brought to the cell.²⁵

At about 12 noon the fire alarm went off for the first time in the duty officer's office²⁶. The duty officer turned off the alarm because he thought it was not functioning correctly but 10 seconds later it went off again. The duty officer called his superior officer to inform him about the fire alarm. Once again, the police officer turned it off, grabbed the keys of the cell and started running there. He then ran back to fetch the keys to unlock the ankle restraints. After that he ran to the office of another police officer to ask him to accompany him. By the time they reached the cell, there was already so much smoke that it would have been too

dangerous for them to enter. During the oral proceedings in relation to this case, police officers made contradictory statements about whether there had been a fire-extinguisher close to the cell. At least one of the police officers ran to his private car to fetch a fire-resistant blanket.²⁷ The Dessau Regional Court concluded that Oury Jalloh died from heat inhalation within two minutes after the outbreak of the fire²⁸.

Amnesty International is gravely concerned that Oury Jalloh was left alone in a cell while physically restrained, that the police failed to regularly monitor his safety and well-being, and ignored the initial fire alarm warning them that he was in danger. Amnesty International is also concerned that elements of racial discrimination may have affected the manner in which Oury Jalloh was treated by the police. On 7 January 2005, when the police officer called a doctor to take a blood sample, the following phone conversation took place:

Police Officer (calls the doctor): *"Ok? Will you prick a Black African?"*

Doctor: *"Oh, shit."*

Police Officer: *Laughing*

Doctor: *"I never find a vein with dark-skinned."*

Police Officer: *"Then, bring a special cannula."*

Doctor: *"I'll do so, okay. See you in a minute."²⁹*

In the oral proceedings before the Dessau Regional Court the police officer apologized for his statements in this conversation.³⁰ Amnesty International was informed by the chief of the police of Dessau that the police of Dessau no longer work with the doctor.³¹ According to information available to Amnesty International, police in Dessau have not received further compulsory training on the prohibition of racial discrimination since Oury Jalloh's death. A module on inter-cultural training is included in the initial training of police officers.

See page 47 for information about the investigation into Oury Jalloh's case. For another case with alleged elements of racial discrimination see the case of IS on page 25.

Adem Özdamar

On 5 March 2008, 26-year-old Adem Özdamar died in hospital after being transferred from a police station where he had been bound to a stretcher during a panic attack. On the night of 17 February 2008 at around 2am, Adem Özdamar called the police because he feared he was being pursued.³² At the time of calling, he was having an acute schizophrenic episode resulting from cocaine abuse. Two police officers, accompanied by a law student who was an intern in the police station, arrived at Adem Özdamar's flat. They entered the flat to see whether anyone was spying on the flat, as Adem Özdamar had feared – and then suggested he come with them.

Once he was in the police car, Adem Özdamar panicked when he realized that, rather than taking him to his sister's, as he had expected and as his mother had said that they would when he entered the police car, the police were taking him to the police station. On arriving at Hagen police station, Adem Özdamar started to scream and allegedly jumped onto the counter when the officers tried to restrain him. To prevent him resisting restraint, a police officer used pepper spray inside the police station, which caused one police officer to cough and retch. The use of pepper spray inside small rooms contravenes the recommendation of the CPT, which has emphasized that:

“The use of such gases in very confined spaces, such as cells, entails manifest risks to the health of both the detainee and the staff concerned. Staff should be trained in other control techniques (for instance, manual control techniques or the use of shields) to immobilise a recalcitrant detainee.”³³

As the pepper spray had no visible effect on Adem Özdamar, the police officers decided to restrain him on a stretcher with handcuffs, shackles and belts, in a face-down prone position. Initially some seven police officers were involved in restraining Adem Özdamar, allegedly because he was resisting so forcefully, then more were called to help. At one point, there were 13 police officers in the room. The investigations of the PPO could not clarify how many of them tried to restrain Adem Özdamar. Adem Özdamar was restrained in the position for at least 15 minutes.

When the emergency doctor arrived, she noticed that Adem Özdamar was not breathing, and ordered that he be turned over onto his back. The police allegedly replied that “it would be better not to do that, as the man is extremely aggressive”. It took the police officers two to three minutes to release all the restraints. According to the emergency doctor’s written statement, she asked the police officers whether someone had sat on his chest or whether he had hit his head against something. Reportedly, the police officers responded that nobody had sat on his chest, but that they did not know whether he had hit his head against something. The doctor thereafter informed the hospital personnel that “the patient had possibly hit his head on a wall”. Furthermore, a forensic doctor later stated that haematomas on his face were “due to blunt force”.

The emergency doctor succeeded in resuscitating Adem Özdamar after 20 minutes but he fell into a coma and died on 5 March 2008. Adem Özdamar’s family asked a radiologist in private practice to review the x-rays and CT-scans taken in hospital. The radiologist diagnosed a nasal fracture. However, in the autopsy report that was commissioned by the PPO, the nasal fracture was not confirmed. Adem Özdamar’s family requested a second autopsy in Turkey. His body was sent to Turkey, but the results of the second autopsy are not known.

While noting the assessment of the PPO (see p 45) that positional asphyxia could be excluded as a cause of death, Amnesty International is nevertheless concerned that Adem Özdamar was restrained in a face-down prone position for 15 minutes - so tightly that it reportedly took two to three minutes to remove the restraints. The CPT has pointed out that keeping a detainee in a face-down prone position, in particular with staff putting their weight on various parts of the body when the person concerned puts up a struggle, entails a risk of positional asphyxia. The CPT has made it clear that the use of force and/or means of restraint capable of causing positional asphyxia should be avoided whenever possible and that any such use in exceptional circumstances must be the subject of guidelines designed to reduce to a minimum the risks to the health of the person concerned³⁴. This would require, for example, constant monitoring to ensure that the person is able to breathe - whereas in Adem Özdamar’s case it appears that it was not until the emergency doctor arrived that it was noticed that he had stopped breathing. Other expertise indicates that this would also require moving a person from the position of being restrained while lying face-down off their stomach as soon as they are restrained.

In addition, Amnesty International is concerned that it could not be clarified why Adem

Özdamar was taken to the police station and not to a psychiatric hospital even though it was apparent that he was suffering from mental health problems. Amnesty International is also concerned that according to Adem Özdamar's mother, she had not been informed by the police officers that they would take Adem Özdamar to the police station rather than to his sister's, as she had believed. Amnesty International is also concerned that the use of pepper spray in such a confined space had not been investigated by the PPO.

See page 45 for information about the investigation into Adem Özdamar's case.

Jendrik Thiel

Eighteen-year-old student Jendrik Thiel died in police custody in the night between 29 and 30 May 2008, after strangling himself with shoe laces while in detention at the Berlin-Tempelhof police custody centre.

Jendrik Thiel was arrested, together with four friends, on the night of 29 May 2008 on suspicion of damaging property. According to the police, he was detained in order to be subjected to a blood test as he appeared to be intoxicated (the autopsy later revealed a blood alcohol level of 2.1 per mille) and to be identified (even though the police detained him in front of his house and in the presence of his mother).

According to statements of the police officers who detained him, Jendrik Thiel behaved very aggressively during detention.³⁵ He and his four friends were taken to the Berlin-Tempelhof police station, where they arrived at about 11.55pm. Due to a strike in the police force, at that time officers from other Berlin police units were on duty at the Berlin-Tempelhof police station.

According to statements given later by the police, because of overcrowding in the police station, Jendrik Thiel's identification could not be carried out immediately. He was therefore locked in a cell alone, while his friends were placed in detention together in another cell. According to internal regulations of the Berlin police, people who are clearly drunk and are taken to the police station only to establish their identity and to take a blood sample, should generally not be locked in a cell.³⁶ Moreover, people in police custody should usually not be placed alone in a cell. Internal regulations only allow this in exceptional circumstances, when it is considered necessary.³⁷ The police argued that Jendrik Thiel and his friends were locked in cells because this was the only way, in overcrowded conditions, to supervise and control them. Before being placed in the police cell, Jendrik Thiel was searched for dangerous items. However, police officers failed to remove his shoe laces, although internal regulations of the Berlin police require that, if a person is detained in a police cell, all dangerous items must be removed from them.³⁸ According to the statement given by one police officer during the investigation into Jendrik Thiel's case, shoe laces are not normally removed from people who are taken into custody for only a short period of time if there are no indications that they might harm themselves.

In contravention of police regulations, there were no written records of the times he was monitored in his cell and of the identity of the police officers who performed the checks. One police officer subsequently claimed that he had monitored Jendrik Thiel's cell at 1.10am and found him to be behaving normally. When the cell was monitored again at around 1.20am,

police officers found him lying under the bed having hanged himself by tying the shoe laces to the bedposts.³⁹

The CPT has stressed that the duty of care which is owed by the police to people in their custody includes the responsibility to ensure the safety and physical integrity of detained persons, and, by implication, to be alert to any potential for self-harm.⁴⁰ The CPT has emphasized that for many people, the fact of having been detained by the police will be a highly stressful experience and that, in view of this, police officers should ensure that people who are newly detained do not have ready access to means of harming themselves (such as belts, ties, broken glass, etc.).⁴¹

Amnesty International is concerned that police regulations aimed at protecting people in custody against self-harm were not applied in this case. The overcrowding in the police station and the fact that, as a result of the strike, the police station was not staffed by police officers normally on duty there, may have presented additional risk factors. This underlines the importance of ensuring that procedures designed to protect detainees, including those who are intoxicated or vulnerable, are complied with at all times.

See page 48 for information about the investigation into Jendrik Thiel's case.

CASES OF ALLEGED ILL-TREATMENT, INCLUDING EXCESSIVE USE OF FORCE

Amnesty International has received allegations of ill-treatment, including excessive use of force, by the police in all 16 laender as well as by the Federal police. The incidents are reported to have taken place during arrests and removals, in police stations, during demonstrations and before and after football matches. This section will examine several such cases which are representative of the range of concerns Amnesty International has about this issue in Germany.

THE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT IN INTERNATIONAL LAW

Torture and other cruel, inhuman or degrading treatment or punishment are absolutely prohibited - at all times in all circumstances - under international law. International human rights standards also prescribe measures which states should take to prevent torture and other ill-treatment, to investigate alleged cases, to bring to justice those responsible and to ensure reparation to victims.

Germany is party to a number of international human rights treaties which impose obligations upon the German authorities to prevent and punish torture and other ill-treatment by its agents and ensure redress and reparation to the victims of such treatment. These treaties include the ECHR, the ICCPR, and the UN Convention against Torture.

The Convention against Torture sets out in some detail the states' obligations to prevent and investigate torture and other ill-treatment.

In particular, with regard to prevention, states are obliged to:

...ensure that education and information regarding the prohibition against torture [and other ill-treatment⁴²] are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.⁴³

In addition, they are obliged to:

... keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or

*imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture [or other ill-treatment]*⁴⁴

The UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor its implementation by states parties, has stressed that “*the law must prohibit the use [or] admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment*”. With regard to ensuring accountability of perpetrators and redress for the victims, the Committee has stated that acts of torture or other ill-treatment must be punishable under the criminal law and that individuals who violate the prohibition “*whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible*”. The Committee has also stressed that the domestic legal system must guarantee appropriate redress for victims: “*The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.*”

THE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT IN GERMAN LAW

German constitutional and criminal law prohibits acts of torture and other cruel, inhuman or degrading treatment or punishment. Article 1 paragraph 1 of the Basic Law (the Federal Constitution) states that: “the dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.” Article 2 paragraph 2 states: “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 Article 104 paragraph 1 of the Basic Law, which states that “detained persons may not be subjected to mental or physical ill-treatment”. Most of the constitutions of the laender contain similar provisions.⁴⁵ Those constitutions which do not have a catalogue of fundamental rights, refer to the Basic Law.

Acts of torture and other ill-treatment are criminalized under the German Criminal Code. Section 340 Paragraph 1 of the Criminal Code prescribes that “A public official, who during the discharge of his duties commits or allows bodily injury to be committed, shall be punished with imprisonment from three months to five years.” Furthermore, under the Criminal Code the extortion of testimony constitutes a crime according to Section 343, as well as coercion (Section 240) and threat (Section 241).

In some of the cases described in this chapter, ill-treatment has taken the form of excessive use of force by law enforcement officials. Under international human rights standards, there are circumstances in which police may use force, but only when this is strictly necessary and proportional to a legitimate law enforcement objective. The necessity and proportionality of any use of force in any particular instance must be assessed in the light of the specific task the police are carrying out in that instance with regard to the individuals concerned, such as the degree of resistance offered by an individual they are seeking to arrest – not by the overall context in which they are working, such as policing demonstrations where some incidents of disorder are taking place, or by their expectations as to what physical resistance they may encounter. If the use of force in a particular instance is not necessary and proportional in that instance with regard to that individual, it amounts to ill-treatment.

THE USE OF FORCE

International human rights standards regulate the use of force by police officers. The UN Code of Conduct for Law Enforcement Officials, which was adopted by the UN-General Assembly in 1979, spells out how force

should be used. Article 3 of this Code states:

*Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.*⁴⁶

The UN Basic Principles for the Use of Force and Firearms elaborate on this principle, with detailed guidance as to the use of force and firearms.⁴⁷ Principle 4 of these Basic Principles stipulates that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

While the Code of Conduct and the Basic Principles are not legally binding as such, and while some of their provisions are clearly guidelines rather than legal obligations, they are frequently referred to as authority by the European Court of Human Rights, other regional courts and other human rights bodies, and their core provisions on the use of force are an elaboration of legal rules applicable to states by way of their treaty obligations with regard to the right to life. In particular, Article 3 of the Code of Conduct and Principle 9 of the Basic Principles reflect binding international law⁴⁸

All German laender, as well as the Federal state, have laws that govern the use of force by police officers. The law of the land Berlin on the use of force in public office is typical of these.⁴⁹ It allows the use of force only if it is proportionate. The principle of proportionality is enshrined in the Federal Basic Law. This means that the following requirements need to be fulfilled for the use of force to be legitimate: it must be appropriate to achieve a legitimate objective; and it must be necessary to achieve the objective which is intended, i.e. among different available means it must be the least invasive. Finally it must not be disproportionate to the intended objective.

JE (male)

JE told Amnesty International that he had been ill-treated following his arrest and that, as a result, he suffered a broken jaw. On 16 July 2007 at around 7pm, JE, then aged 39, was asked for his identification document by two police officers in Stuttgart on suspicion of having stolen some T-shirts from a nearby shop. According to JE's statement to Amnesty International, he showed his identification document without hesitation or resistance. He was then arrested and handcuffed. JE further stated that he was pushed around by one police officer during the arrest, that his trousers were removed in public and that his shopping was thrown around. According to JE, he complained about this to the police officer. When he was in the van, the police officer allegedly kicked him and threatened to beat him if he did not shut up.

In the police station, JE says he was put in a cell and that the same police officer pressurized him to sign a document which JE was not able read as it was only shown to him briefly. According to JE's statement, when he declined to sign this paper, the police officer first kicked him in the area of his liver and then punched him in the face and left the cell. JE further stated that after he had recovered, he called for a doctor through the intercom system. Allegedly, a female police officer looked at the injuries and did not call a doctor.

Such conduct is contrary to the UN Code of Conduct for Law Enforcement Officials which stipulates in Article 6 that "Law enforcement officials shall ensure the full protection of the

health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.”

Moreover, the CPT has repeatedly underlined that the right to consult a doctor is an essential right of a person taken into police custody, and that a doctor should always be called without delay if a person in police custody requests a medical examination.⁵⁰ According to JE, after 30 minutes the police officer who had allegedly arrested and beaten him came in and told him to take his things and leave. Before he left the police station, he complained informally to another police officer that he had been ill-treated by the said police officer. Two days later, he was diagnosed with a broken jaw and had to undergo surgery.

See page 49 for information about the investigation into JE's case.

ER (male)

Special Deployment Command (Spezialeinsatzkommando) officers raided ER's home in Berlin during the night of 29 April 2005 because he was suspected of having committed an armed robbery earlier that day at a nearby supermarket.⁵¹ ER was 17 years old at the time of his arrest. His parents had gone to bed and were asleep when four police officers broke down the front door and entered his bedroom. The police officer who entered first carried a heavy shield for protection according to the facts established by the Berlin Regional Court. During the arrest ER received multiple injuries to his skull, nose, face, chest and kidneys. He also lost a tooth. Later he was diagnosed with post traumatic stress disorder (PTSD).⁵²

The police accounts of what occurred in the flat differ from ER's. During the oral proceedings against the four police officers before the Berlin Regional Court, the four police officers claimed that ER bumped into the shield of one of the police officers when he entered the bedroom. ER, however, testified that he was lying in bed when he heard a loud noise; while still in bed, he was held down, his mouth was covered and he was hit at least twice on his nose and all over his body; he testified that it might well be that he had been hit about 30 times. He said that he tried to shout and was so scared that he attempted not to move. One of the police officers allegedly tried to beat him with the shield. He was put on the floor, lying on his back. When he tried to get up, he was kicked on his back and was verbally abused. According to ER, one of the police officers said during the incident that if anything happened, they would say that he had bumped into the shield.⁵³

See page 44 for information about the investigation into ER's case.

JM (male)

JM, a software engineer then aged 43, told Amnesty International that he had been ill-treated and verbally abused by Federal police in Solingen on 11 January 2008. He was stopped by two plainclothes officials from the Aliens Authority under a railway bridge in Solingen when he was on his way back from work at about 5.20pm. The officials asked him to show his identification paper, as they believed him to be a foreign national.⁵⁴ Thinking that he did not have his identity document on him, JM went with the two officers and a third Federal police officer who had joined them, to the police station, where he was asked to empty his pockets.

According to JM, he laid the content of his pockets (wallet, key and handkerchief) on the

counter. One police officer reportedly searched his wallet and found his German identification document. JM told Amnesty International that he had not been aware that he was carrying his ID with him, as his wife had put it in his pocket. According to JM, the situation escalated when he did not comply with an order by the police to sit down. He stated that he was pulled to the ground by three officers, beaten, handcuffed and kicked while on the ground.

The criminal complaint filed against JM for resisting law enforcement officers alleges that JM had attacked a police officer at the police station after being told that he would be searched. He is alleged to have jumped backwards up onto a bench and punched the police officer with his fist from above. The report states that because of this, he was pulled to the ground and handcuffed.

The incident lasted for about an hour. JM was released at about 6.15pm, having also been tested for his alcohol level with a breathalyser.

See page 39 for information about the investigation into JM's case.

AD (male)

On 30 November 2005, the Federal police attempted to forcibly remove AD by plane to Turkey. This was the second attempt to forcibly remove him. In the criminal complaint filed by his lawyer, AD alleged that when he refused to take a seat in the plane, one police officer put his hands around his neck and throttled him. According to AD, the police officer stopped only after a passenger intervened. It is alleged that the same police officer banged AD's head three times against the arm rest. When AD was taken off the plane, two police officers reportedly pushed him into a bus where, according to AD, they pressed their elbows against his neck. In addition, he complained that the police officer who sat next to him in the bus hit him in the stomach with his fist. According to the police officers, they repeatedly asked AD to take a seat, which he refused to do. They said he was then shackled while heavily resisting and forced into his seat.

The CPT has repeatedly raised concern about ill-treatment during forcible removals of people. The CPT has said:

it will often be a difficult task to enforce an expulsion order in respect of a foreign national who is determined to stay on a State's territory. Law enforcement officials may on occasion have to use force in order to effect such a removal. However, ... [it would] be entirely unacceptable for persons subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as punishment for not having done so.⁵⁵

Amnesty International is concerned that, if the account by AD of his treatment is accurate, the police used excessive force. While it could have been necessary to restrain AD in order to effect his removal from Germany, actions reported by AD such as throttling him and banging his head against a seat would constitute a physical assault which clearly goes beyond proportionate use of force.

See page 40 for information about the investigation into AD's case.

TC (female)

TC, a 28-year-old German law student of Turkish origin, was visiting a friend (male) in Lübeck and planned to return to Hamburg by train. Her friend accompanied her. According to her statement, at the station in Lübeck on 21 February 2007 at about 1pm, TC was approached by a woman who offered to allow her to travel on her train ticket, when three plainclothes police officers approached her. She says that she was asked for her identification and showed her German identity card; later, this was confirmed by her friend but disputed by the police. She was taken to the Federal police station at Lübeck train station, allegedly because she had not shown her ID when asked to do so.

At the police station, she was searched by a male police officer. The CPT has emphasized that persons deprived of their liberty should only be searched by police officers of their gender.⁵⁶

According to the police officers, TC was searched by a male police officer because she was dressed and appeared like a man. According to TC, she had said that as she was a woman, she could not be searched by a male police officer. She also stated that she had informed the police officers about her recent surgery and that she had shown them her injured arm. Allegedly, the police officer who had searched her responded: "Shut up!". TC stated that the police officer then beat her with his fists on her breasts, pushed her towards the wall, grabbed her by her neck and shook her so that her head banged against the wall.

TC's friend told Amnesty International that he had witnessed the whole event.

TC further stated that when she asked to call her lawyer, the police refused her request and when she tried to get her mobile to call her lawyer, the police officer grabbed her again. According to her statement, when another police officer entered the room, she was finally allowed to call her lawyer.

TC's friend was still present at the police station, and according to both TC and her friend, she said aloud to him that he was her witness. Allegedly, the police officer who had searched TC then suddenly stopped and asked a colleague to take the friend into the neighbouring room. According to the friend's statement, the door was open so that he could hear when TC spoke to her lawyer by telephone.

TC's friend stated that he was then told to leave the police station. After he had gone, the police officer allegedly took TC's backpack away. According to TC's account, she protested about this, whereupon the police officer punched her in the head with his fist. According to TC's statement she swore at him as she was scared that he would injure her further. Then the police officer reportedly took her belongings and threw them onto the floor.

Following her release, on the same day, TC said that she went to the hospital as she was in pain as a result of the ill-treatment she had been subjected to by the police. The medical reports, which Amnesty International has reviewed, state that she had bruises and multiple traumas on the thorax, the cheekbone, the arms and the head.

See page 42 for information about the investigation into TC's case.

MM (male) and others

MM, from Berlin, is a communications engineer who works in the German Federal Parliament. On the night of 20 August 2005, when he was 33 years old, he was celebrating his stag night at a Berlin music club called Jeton. At 1.30am around 300 police officers, of whom 100 belonged to the Special Deployment Command (Spezialeinsatzkommando) of the land of Berlin, entered the club to search it.⁵⁷ These latter police officers' faces were concealed behind balaclavas. Some of the police officers also wore helmets. Although the police had expected violent resistance, when they raided the club, they did not encounter any.⁵⁸ The police had obtained a judicial search warrant based on information that 150-250 football hooligans were going to gather at the club in the early morning, and were going to infiltrate a football match due to take place in Berlin-Köpenick the following evening. The search warrant was granted to obtain evidence against football hooligans who were suspected of planning a violent disturbance in connection with the scheduled match. During the search, the police arrested 158 people, of whom 152 were not released until late afternoon the following day. Only six were brought before a judge, who approved the arrests in four cases.

MM said he was on the second floor of the discotheque when he was hit on the head with a side-handle baton. Reportedly, he lost his balance and was again hit in the face by one of the masked police officers. According to his statement to Amnesty International, a police officer shouted at him: "Down, bastard," and despite stopping immediately and standing still with his hands on the banister, he was again kicked, beaten and insulted by several police officers, even when he was already lying on the floor. MM thought he had lost consciousness; he said he then heard a police officer intervening by saying that he was bleeding.

According to MM, when he regained full consciousness, he asked a police officer for help as he was bleeding heavily, but the police officer did nothing to assist him. MM told Amnesty International that he had the impression that the police officers had been acting to punish the visitors of the club; it appeared that they beat persons lying on the floor who were offering no resistance. MM was taken to hospital by police officers after the incident. He remained there until 22 August 2005 because of his head injuries. He was diagnosed with trauma to the head, and suffered two lacerations to the head. MM reported that as a result of the incident, he suffers from post-traumatic stress disorder.

MM was not the only one to be injured in the Jeton club that night. Another 21 people were injured severely enough to require medical treatment. MM's friend F described what he experienced during this incident in an interview with Amnesty International. He witnessed a police officer kicking the person next to him in the stomach who then collapsed. He told Amnesty International that he had lain down immediately with his head down, as commanded. According to his statement everybody was handcuffed while lying on the floor. Next to him was a person with his arm in a plaster bandage. According to F, the police broke the plaster bandage and the person concerned had unbearable pain in his arm. F continued, saying: "I was totally dismayed about their brutality. I was lucky as they did not beat me. But I witnessed how they beat others as you would kick a ball." As a result of the police action, eight ambulances and one mobile intensive care unit were required to treat the injured people. In an interview with Amnesty International, MM emphasized that since that time, his trust in the police and in justice had been destroyed. According to MM's and F's statements, all of their 15 friends had injuries; one complained about a pinched nerve, another reportedly suffered a laceration to the head and required 17 stitches.

One of the Jeton club guests suffered a double fracture of the nose as a result of the police actions. He was not taken to hospital to have these fractures treated until after 9am in the morning. After being treated, he was taken to the police station and held in custody until the early evening of 21 August 2005. The local court ruled that - given his injury - his detention had been disproportionate and therefore illegal.⁵⁹

See page 35 for information about the investigation into MM's case.

AW (female)

...This police officer was above me and hit into my side with his truncheon, three or four times. The fourth was the hardest, then something broke inside of me, which I later learnt was my rib.

It makes me feel helpless. I was lying there and was totally defenceless against the violence of this man and today I still feel a deep helplessness that it was not possible to catch such police officers and to hold them accountable for their misconduct.

AW (female)

On 30 April 2007 at around 11pm AW, then aged 30 and a member of staff of Amnesty International Germany, was going home. She was walking along the pavement of Oranienstrasse in Berlin with a female friend, a journalist from a local newspaper. On this street, every year on the night of 30 April-1 May there are demonstrations which sometimes turn violent. In an interview with Amnesty International, AW described the incident as follows: About 100 metres away she saw a group of protestors on the street who were being followed by a group of police officers. She described the situation to be tense. AW and her friend were between the protestors and the police officers. They wanted to pass this crowd on the pavement, as they felt there was enough space to pass without getting near the crowd. Without explanation or announcement, the police ordered the use of pepper spray. All of a sudden, a group of about 13 police officers came running to the pavement where AW, her friend and a couple of other people were standing with their backs to the wall. They had stopped to let the police pass. A police officer hit AW with a truncheon on the back of her knees. She fell onto the pavement and tried to protect her head. The police officer hit her in the side three or four times with the truncheon, breaking a rib. AW stated in an interview with Amnesty International that it must have been clear to the police that she was not one of the protestors, who were marching towards them.

She could not work for three weeks as a result of her injuries.⁶⁰

See page 35 for information about the investigation into AW's case.

KI (female)

The G8 summit in Heiligendamm near Rostock in June 2007 drew large protests. Because the police expected about 100,000 protesters, 17,500 police officers from all laender were deployed in the region during the summit. Several demonstrations took place, some of them involving violent incidents. About 1,000 protesters were detained. In total, 1,578 investigations were started, of which 82 were directed against police officers as a result of bodily injury or deprivation of liberty. Seventy-two of these investigations were terminated on grounds of lack of evidence or for other reasons. All the investigations were carried out by the

Rostock police under the supervision of the Rostock PPO.

KI, aged 27, is a professional photojournalist who covered the demonstrations against the G8 summit in Rostock on 2 June 2007. She was accredited as a journalist at the summit and in order to be recognized as such she was wearing a helmet and a visible badge. She told Amnesty International that it was normal practice for journalists to wear a helmet during demonstrations to protect themselves in case of violence.

According to her account, she was on her way from the city centre to the city harbour when a group of about 20 police officers ran in her direction. She told Amnesty International that the police officers had been standing on the other side of the road. The traffic had been stopped when protesters rolled a pink balloon towards the police officers. KI took pictures of this. According to her she was standing in a group of journalists, when she was run over by the group of police officers and beaten with a baton. KI was not able to say how many police officers beat her with a baton. KI told Amnesty International that she shouted that she was a journalist and showed her G8 press card. The attack dissipated but allegedly, seconds later as she lay on the ground, one or more police officers hit her again on the knee, the wrist and her head, which was protected by a helmet. According to KI, they also hit her backpack which held KI's photography equipment.

According to KI, the police officers had symbols of their unit on the back of their uniforms but these were covered over.

During the incident the photographer took pictures up to the time when she was lying on the ground after having been beaten.

See page 50 for information about the investigation into KI's case.

RS (male)

RS, a man from Kosovo who was then aged 29, was in a car with two friends of his in the city of Duisburg on 30 April 2009 at around 3am. According to the written statements they made to the police, they had spent the evening together and had stopped near a sports ground in order to urinate. A neighbour suspected that they might have been stealing from a kiosk nearby and called the police. After RS and his friends left the scene, they were stopped by two police cars. RS, who was illegally in Germany, got out of the car and ran away immediately. Two police officers chased after him.

The police account of what happened next differs from RS's. RS told Amnesty International that he eventually followed the police officers' order to stop and raised his hands. Allegedly, one of the police officers then came towards him quickly and struck him five or six times while the other police officer was watching. According to RS, he was then brought to the car by the police officers and thrown to the ground. The police officer who had beat him allegedly remarked on the bleeding in his eye to the other officer.

The police filed a criminal complaint against RS in which it is alleged that police officers apprehended RS while he was attempting to climb over a fence. Allegedly, he resisted arrest trying to hit one police officer's head with his elbows. According to the police, he was then

dragged from the fence and landed on the ground with his face down. Allegedly, police had to use physical force – two punches and a neck lock– to restrain him.

RS was brought to the police station. A doctor who was present there treated him and on his advice, RS was taken to hospital. He had a severe injury to his right eye as well as a nasal fracture and had to undergo emergency surgery. RS lost his right eye as a result of the incident.

Amnesty International is concerned that if the account by RS is accurate this is a very serious case of ill-treatment.

Please see page 41 for information about the investigation into RS's case.

IS (female)

Amnesty International is concerned that in some cases the organization has been informed about, racial discrimination has played a role in ill-treatment. One example is the case of IS, a German woman of African origin.

THE PROHIBITION AGAINST RACIAL DISCRIMINATION

The prohibition against racial discrimination is enshrined in a number of human rights treaties that Germany has ratified, including the ICCPR⁶¹ and the ECHR⁶². Germany is also a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which defines racial discrimination as:

*... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*⁶³

The ICERD explicitly places a dual obligation on states to ensure that their agents do not themselves engage in racial discrimination, and to prohibit and eliminate racial discrimination by private persons, groups or organizations.⁶⁴ States parties to ICERD are required to address the root causes of racial discrimination and secure adequate remedies for its victims.⁶⁵

With regard to the police specifically, the European Code of Police Ethics⁶⁶ provides that police training shall take full account of the need to challenge and combat racism and xenophobia. Amnesty International calls for programmes for the selection, training and monitoring of police and other officials involved in the administration of justice to include measures to ensure that their conduct is not in any way racist or discriminatory, and for anti-racist programmes to be an essential element in the training of such officials. Racist behaviour by such officials should not be tolerated and the use of racist or derogatory language should be addressed with disciplinary and criminal measures. Specific policing operations should be reviewed to ensure that they are not targeted in a discriminatory fashion against communities because of their race, colour, descent or national or ethnic origin.⁶⁷

IS owns a shop in Reutlingen which sells products from Africa. According to her statement to Amnesty International, on 3 August 2007 four people – who she suspected were plainclothes police officers – asked a person of African origin who was standing in front of the shop

whether he would sell marijuana. According to IS, she noticed the incident and intervened to expel the people from the front of her premises.

Later that day, after the shop was closed she was chatting with three customers, all of African origin, in front of the shop. A police car approached with three police officers. They demanded identification documents. IS reported that she asked why they were asking for the ID, but that the police officers refused to give any reason for the check. IS said she complained about the discriminatory treatment of only carrying out such checks on black people. Then the situation escalated.

According to IS, the following happened: The police officers surrounded the group of four people and closed in on them. When one of the customers stepped to the side to maintain his balance, a police officer beat him and kicked his legs, and the customer fell to the floor. His arms were twisted behind his back, he was handcuffed and his head was pressed against the floor.

IS tried to help her customer but said she was stopped by a police officer who twisted both her arms behind her back and handcuffed her. She reportedly was kicked in the legs and fell to the ground. A police officer reportedly knelt on her back for about 10 minutes. She said she was kicked three times in the back. When she again complained about the discriminatory behaviour she said a police officer told her to change her skin colour.

At the police station, IS was reportedly strip-searched in front of male police officers. Later a medical report stated that she had bruises and haematomas amongst other injuries in the area of her neck and her back.

According to the CPT standards concerning women deprived of their liberty, any search which requires a person deprived of their liberty to undress should be conducted out of the sight of staff of the opposite sex.⁶⁸

The police officers claimed that IS and two other persons had refused to reveal their identity when asked for their identification document. When they tried to separate them to carry out the ID check, IS and one of the customers allegedly attacked them, so they had to restrain them by bringing them to the ground.

On 8 August 2007 the police lodged a complaint against IS. On 9 August 2007, IS filed a criminal complaint against the police officers for bodily injury and unlawful imprisonment. She did not file a request for prosecution of the officers on grounds of insult.⁶⁹ Investigations by the PPO were terminated on 29 April 2008.

On 17 April 2008 IS was charged with resisting enforcement officers, bodily injury and insult. On 2 June 2008 the court terminated the proceedings against IS on condition that she paid €1000 (pursuant to Section 153a of the Criminal Procedure Code) in relation to the charges of resistance to law enforcement officials, bodily harm and insult.⁷⁰ IS told Amnesty International that she agreed to this as she thought that complaining against the decision might prejudice her. In court, a police officer said that the reason for the ID check was that several of the people involved were known to him from drug-related incidents, though he did not substantiate his claims.

HUMAN RIGHTS EDUCATION FOR POLICE OFFICERS IN GERMANY

Amnesty International requested information regarding the role of human rights education in the education and further training of the police from all Ministries of Interior. Eleven out of the 16 Ministries of the Interior provided specific information.⁷¹ Two states simply said that human rights education forms an integral part of all levels of qualification,⁷² while three states failed to reply.⁷³

For all ranks of police officers, all 11 laender treat human rights education as an integral component of constitutional law. In addition, seven laender address human rights in ethics classes.⁷⁴ The laender of Hesse and Thuringia further stress the importance of human rights in leadership courses. Berlin and Schleswig-Holstein explicitly require human rights courses during the education of lower-ranking police. A one-day seminar relating to International Human Rights Day forms part of the curriculum of future police officers in Rhineland-Palantine.

The Germany-wide centralized education for the highest-ranking police officers addresses human rights issues from the perspective of the fundamental freedoms written into the German Constitution and European law, and integrates human rights aspects from international law. Additionally, a module concerning the international and multicultural challenges of police work links human rights issues with questions arising from migration and increasing cultural diversity.

Regarding further training in the field of human rights, no Ministries stated that human rights courses constitute a compulsory element of professional development. However, all 11 specific answers pointed to the importance of human rights with regard to different fields of further professional training, such as multicultural understanding, dealing with racism, interrogation techniques or matching requirements of proportionality.

The land of Hesse is currently developing a training module specifically dealing with the role of human rights in police work. Saxony-Anhalt offers a five-day training module concerning police behaviour towards migrants, with a particular emphasis on racism. None of these courses are compulsory.

FAILURES IN ACCOUNTABILITY

The ICCPR provides that all persons are equal before the law (Article 26). Law enforcement officials are not above the law – they are subject to it. This means that the police must be accountable to the law, to the state and to the public. The police as an institution are publicly accountable, which includes being overseen by independent agencies set up by law and open to public scrutiny, including by parliamentary or other elected or representative bodies. Internal training, oversight and disciplinary procedures should be in place within the police to ensure that officers and operations comply with the law, with relevant policies and codes, and with the obligation to respect and protect human rights.

In the face of allegations or other reasonable grounds for believing that torture or other ill-treatment has occurred, or that a state has violated its obligations to respect and protect the right to life, international human rights law requires the authorities to initiate a prompt, independent impartial and thorough investigation. Disciplinary measures should be taken where appropriate, and officers responsible for criminal conduct must be brought to justice in full and fair proceedings. Furthermore, the authorities must ensure that victims of human rights violations have access to an effective remedy and receive adequate reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.⁷⁵

THE RIGHT TO A REMEDY

Article 2(3) ICCPR provides that states are obliged:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
- (c) To ensure that the competent authorities shall enforce such remedies when granted.*

The Human Rights Committee has elaborated on what this obligation means in practice. States must ensure that individuals have accessible and effective remedies to vindicate their rights and should establish appropriate judicial and administrative mechanisms for addressing claims of rights violations. In particular there should be administrative mechanisms to give effect to the general obligation to ensure that allegations of violations are investigated promptly, thoroughly and effectively through independent and impartial bodies. An essential element of the right to a remedy is the obligation to ensure that victims receive reparation, including, among other things, compensation, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of torture and other ill-treatment and violations of the right to life. The Committee has noted that the problem of impunity for these violations may well be an important contributing element in their recurrence.⁷⁶

The following statement of the CPT summarizes some of the impact of fulfilling the legal obligations to investigate incidents of alleged police misconduct, to bring those responsible for abuse to justice and to ensure adequate reparation for victims. It has stated:

... when officials who order, authorise, condone or perpetrate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated. Apart from its considerable deterrent value, this message will reassure the general public that no one is above the law, not even those responsible for upholding it. The knowledge that those responsible for ill-treatment have been brought to justice will also have a beneficial effect for the victims.⁷⁷

The CPT standards also stress the importance of disciplinary proceedings:

Disciplinary proceedings provide an additional type of redress against ill-treatment, and may take place in parallel to criminal proceedings. Disciplinary culpability of the officials concerned should be systematically examined, irrespective of whether the misconduct in question is found to constitute a criminal offence.⁷⁸

With regard to accountability for human rights violations resulting from the excessive use of force, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state:

Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law. (Principle 7)

and provide for the accountability of superior officers as follows:

Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use. (Principle 24)

Amnesty International has noted that in the cases of alleged human rights violations that it has investigated law enforcement officials were rarely held criminally responsible. Amnesty International's research indicates that there are several reasons for this, which will be highlighted in this chapter. While Amnesty International recognizes that not all complaints filed will necessarily be justified, that can only be ascertained by undertaking an investigation of all allegations. In particular the state has an obligation to investigate promptly, thoroughly, independently and impartially, all incidents when people are injured in custody. It is incumbent on the authorities to provide a plausible explanation of how those injuries were caused and to provide evidence of facts giving rise to doubts about the allegations, especially if they are supported by medical evidence.⁷⁹ In some cases noted in this chapter, criminal investigations were not even started because the alleged victim declined to file a complaint against the police and no action was taken by the authorities themselves. In some incidents the alleged victims complained that their criminal complaints and requests to prosecute were not accepted at a police station. Where an investigation did start, mostly it was terminated by the PPO without charges before the court. In several cases in which criminal investigations were carried out, the police officer(s) concerned could not be identified. In other instances, Amnesty International is concerned that the investigations were neither prompt, nor impartial, nor effective.

ENSURING POLICE ACCOUNTABILITY IN GERMANY

Criminal Procedure

In cases of alleged ill-treatment or excessive use of force by a police officer and or any unnatural death, under the Criminal Procedure Code (CPC), the Public Prosecution Office (PPO) and the police are obliged to start a criminal investigation on their own initiative if there is an initial suspicion that a criminal offence might have been committed (Section 152 and Section 163 respectively). In addition, any person can file a criminal complaint with the PPO, the police or a court (Section 158).⁸⁰ The PPO holds overall responsibility for pre-trial criminal investigations, but it works in close cooperation with the police when carrying out an investigation.

The responsible police unit for carrying out the investigation varies among the laender. While the majority of laender have not established specialized units within the police to investigate allegations of police misconduct, some have.⁸¹ In Hamburg there is a centralized specialist police unit which investigates criminal matters involving police officers. This unit, which is referred to as the Dienstinterne Ermittlungseinheit, is located in the premises of the Departmental Authority for the Interior of Hamburg, and is under the responsibility of the State Office of Criminal Investigations (Landeskriminalamt) of the land of Hamburg. Bremen informed Amnesty International that since March 2009, the Authority for the Interior of Bremen has been responsible for investigations against police officers in Bremen. Lower Saxony stated that there are units within the police authorities for investigating alleged criminal conduct by police officers (so-called departments for internal investigations). In Berlin and Thuringia, criminal investigations against police officers are generally conducted by the State Office of Criminal Investigations, Hesse refers allegations of serious misconduct to the State Office of Criminal Investigations of the land of Hessen. In the land of Northrhine-Westfalia it is always the police unit of the neighbouring city that investigates such allegations.

If the PPO considers that the investigation has revealed sufficient evidence to be able to prefer public charges, it will submit a bill of indictment to the competent court, which then decides whether proceedings before the court will be opened. If the PPO considers that the investigation has not revealed sufficient reason for pressing public charges it will terminate the investigation. If the person who has filed the criminal complaint is also the victim of the alleged offence, he or she has a privileged status during the criminal investigation. He or she can lodge a complaint against the PPO's decision to terminate an investigation with the Public Prosecutor General (Section 172 para. 1). If rejected by this higher body, the victim may apply for a judicial decision (Section 172 para. 2). This also applies to members of the immediate family if the victim has died.

Disciplinary procedure

If a public official is suspected of having committed a disciplinary offence (a culpable breach of his or her duty), his or her superior shall investigate the incident, verify the allegations and impose appropriate sanctions.⁸² Possible sanctions include reprimand, fine, reduction in salary or removal from office. If, in a criminal proceeding, the main proceedings against the official are opened as a result of the same incident, the disciplinary procedure is suspended until the criminal procedure comes to an end. Factual findings by the criminal court are binding on the disciplinary proceedings if the court decision is final. If a public official has been convicted by a criminal court, disciplinary sanctions are subject to certain conditions. In the case of an acquittal, disciplinary sanction can be imposed only if the official's actions constitute a breach of duty without being a criminal offence.⁸³

Compensation

In cases of unlawful acts or negligent or intentional breaches of duty by police officers or other public officials, claims for compensation against the state can be made before civil courts. The compensation includes material damage and under certain conditions, for example, if someone has been killed or injured, also non-material damage.

THE SCALE OF COMPLAINTS ABOUT POLICE ILL-TREATMENT IN GERMANY

Only since 1 January 2009 have all PPOs been required to keep statistics about criminal investigations into certain criminal offences committed by police officers while on duty. As of 12 April 2010, data for the first year have not been published. However, police statistics still do not show how many investigations were carried out against police officers because of bodily injury, coercion or threat during the discharge of their duties. In December 2008, Amnesty International wrote to the Ministries of the Interior of all 16 laender and the Federal Ministry of Interior, as well as to the Ministries of Justice of all 16 laender and to the Federal Ministry of Justice, requesting information for the period of 2006-2008 on the number of complaints lodged against police officers for bodily injury, threat or deprivation of liberty; the number of investigations started against police officers; the number of court proceedings that were opened against police officers; and the number of police officers who were convicted of crimes committed while acting in their official capacity.

Amnesty International received responses from 15 Ministries of Justice, of which seven provided some data.⁸⁴ All referred to the approved changes in procedure which will oblige the judicial authorities to collect all relevant data concerning complaints, preliminary investigations, main proceedings and convictions against members of the police force starting from 1 January 2009. The data provided for seven laender often included cases of complaints against other public officials, or criminal investigations into offences not related to ill-treatment. Therefore, no conclusions can be drawn on this basis with regard to the scale of complaints about police ill-treatment. Of these seven, only Berlin and Saxony gave specific numbers for complaints against police officers for bodily injury.

In Berlin, there have been 234 criminal investigations against police officers for bodily injury during the discharge of their duties in 2006; 278 in 2007 and 548 in 2008. The Berlin authorities explained that the rise in relevant cases for 2008 resulted from a change in the method of statistical analysis.⁸⁵ In Berlin, in 2006, 21 persons were convicted for causing bodily injury, and in 2007, 13 persons were convicted. Saxony reported 52 criminal investigations against police officers for bodily harm for 2004, 85 for 2005, 68 for 2006, 120 for 2007 and 81 for 2008.

Research carried out in 2003 found that investigations against police officers for bodily injury more frequently led to termination of the investigation without a court decision than investigations against other people for the same offence.⁸⁶

Amnesty International considers that these data – while fragmentary – show that there is a considerable number of complaints filed against police officers. The data of the land of Berlin also indicate that only some of these complaints appear to lead to a decision by the court.

WHEN THE VICTIM DECLINES TO FILE A COMPLAINT AGAINST THE POLICE

The CPT standards on impunity state that:

Great care should be taken to ensure that persons who may have been the victims of ill-treatment by public officials are not dissuaded from lodging a complaint.⁸⁷

In Germany, in cases of alleged ill-treatment or excessive use of force, the police and the PPO are obliged to start criminal investigations on their own initiative. Yet, in many cases they start the investigations only once a person has filed a criminal complaint against the police.

However, Amnesty International has received information about cases in which there were credible allegations of ill-treatment but the victims declined to file a complaint against the police. During the course of its research, Amnesty International was repeatedly told by alleged victims and lawyers that, although they felt they had legitimate grievances against police officers, they did not intend to make a complaint as they felt that any such complaint would be unsuccessful. Some of the alleged victims did not lodge a complaint because they feared counter-complaints by the police.

As well as not trusting the system, some alleged victims said they were too afraid of reprisals to file a criminal complaint. This was the case of A, a Chechen asylum-seeker who suffered several fractured ribs after an incident in Chemnitz on 16 February 2005.

A initially wanted to file a criminal complaint against the police officer and asked a lawyer to support him, but before filing the complaint, he changed his mind. He explained to Amnesty International that he was afraid the police officers concerned could harm him or his family, since they would know where they lived.

On 3 August 2006 A received a letter from the land of Saxony ordering him to pay compensation for injuries the police officers had allegedly suffered as a result of A's resistance. A had to pay €249.50 in compensation. Since he was unemployed and only received an allowance amounting to €40.90 per month, he was granted permission to pay in instalments.

Sometimes, people refrain from filing a criminal complaint because they do not know the system or are worried that they will need a lawyer and have to pay legal costs. This was what happened in the case of B, aged 52, who told Amnesty International that he thought that only people with money could get justice. He claimed that on 17 May 2008 he had been observing and taking photographs of police checking the identity of some teenagers prior to a demonstration. A police officer approached him to tell him that it was forbidden to take pictures of police actions.⁸⁸

When B refused to hand over his camera to the police officer, he was allegedly taken to a place behind the railway station in Traunstein with his arms twisted behind his back. He told Amnesty International that he was forced to lean against a wall, and that a police officer kicked his feet so that he fell and lost consciousness for several seconds.

B complained only by filing a petition to the parliament of the land of Bavaria. The petition

procedure is established in the German Constitution and the Constitutions of the laender as a basic right.⁸⁹ It grants the right to make a complaint to the parliament about an action of the administration. The parliament can decide whether it will pursue the complaint, and can question the government. If the parliament concludes that the complaint is well-founded it can make recommendations to the government; however, these are not binding.

Following receipt of B's complaint, the parliament of the land of Bavaria reportedly questioned the Ministry of Interior about B's case and, in the light of the Ministry's response, decided to reject the complaint. B reported that he did not receive a copy of the Ministry's response.

Finally, several people told Amnesty International that they thought a complaint would be unsuccessful and that it would lead to a counter-complaint by the police on the grounds of resisting law enforcement officers. An example of this is the case of C, who participated in a demonstration and was arrested by a police officer because he had not followed an order to leave. According to him, during the arrest, one or two police officers restrained C and held him in a headlock for a couple of minutes, as a result of which he suffered from a haematoma in his right eye. However, he told Amnesty International that he did not file a criminal complaint because he thought that it would be unsuccessful and feared that the police would file a counter-complaint for resisting law enforcement officers.

Indeed, in several cases which came to the attention of Amnesty International the police filed counter-complaints against people who made criminal complaints against the police. This is what happened, for example, in the case of JM described on pages 19 and 39).

The UN Committee against Torture, in its Concluding Observations following its examination of Germany's implementation of the Convention against Torture in 2004, expressed concern at "*some allegations that criminal charges have been brought, for punitive or dissuasive purposes by law enforcement authorities against persons who have brought charges of ill-treatment against law enforcement authorities*". In its recommendations, the Committee called on Germany to "*take all appropriate measures to ensure that criminal complaints lodged against its law enforcement authorities are resolved expeditiously, in order to resolve such allegations promptly and avoid any possible inference of impunity, including in cases where counter-charges are alleged*".⁹⁰

Amnesty International has also noted that in some cases the counter-complaints lodged by the police are handled more expeditiously than the complaints by the alleged victim. (For cases see cases of JM p.39; RS p.41 and TC p.42)

LACK OF INFORMATION ABOUT HOW TO LODGE A CRIMINAL COMPLAINT

In some cases, alleged victims have told Amnesty International that the police refused to accept their criminal complaint when they took it to a police station. Most of these victims were unfamiliar with the criminal justice system and were unaware that they could also file a criminal complaint with the PPO or with a court. Amnesty International has also noted that some victims did not know how to file a complaint at all, or were not aware of what they should take into consideration when doing so. Many people have contacted Amnesty International asking for information about the procedure.

Only a few of the laender have easily accessible information about complaints procedures on their websites.⁹¹ In his recommendations regarding determination of complaints against the police, the Council of Europe Commissioner for Human Rights has emphasized that information on how to make complaints should be displayed prominently in all police stations and in publicity materials.⁹²

DIFFICULTY IN IDENTIFYING POLICE OFFICERS

In several cases, allegations of ill-treatment, including some involving excessive use of force in the context of policing demonstrations, could not be clarified because it was not possible to identify the alleged perpetrator. This is partly due to the fact that police officers in Germany are not obliged to wear identity badges showing their name or number. Amnesty International is concerned that the lack of a requirement for officers to visibly display some form of identity badge has led to impunity for perpetrators of ill-treatment, particularly in the context of demonstrations or when the police have deployed special deployment commands.⁹³ The uniforms worn in these situations have markings showing which unit or group the police officer belongs to, but such identifying marks do not allow for an identification of the individual police officer.

The European Code of Police Ethics states that “*police personnel shall during interventions normally be in a position to give evidence of their police status and professional identity*”. In the comment to this recommendation, the European Code of Police Ethics emphasizes that this requirement is closely linked to personal police responsibility for actions or omissions, in that “*without the possibility of identifying the individual police man/woman, personal accountability, seen from the perspective of the public, becomes an empty notion*”.⁹⁴

In Berlin, the superintendent of police has announced the introduction of obligatory identification badges from 2010. However, these forms of identification have not yet been introduced because the employee committee has to agree to it and has not yet done so. The police superintendent was quoted in the press as saying that these shall consist of a name badge on hook-and-loop tape which could be turned over for security reasons, then showing the police officer’s individual number.⁹⁵ He was also quoted as saying that in a modern police force, which is close to the citizens, it was today a “self-evident gesture” to wear name badges on the uniform.⁹⁶ The police union of Berlin criticized the superintendent’s proposal, stating that the badges would increase dangers for police officers and their families, and would constitute an infringement of their personal rights.⁹⁷

Amnesty International’s concern is that police officers must be individually identifiable. This can be achieved, for example, by means of a visible identity number worn on their uniform and does not necessarily require name badges.⁹⁸

A study by a law professor at the Berlin Free University, commissioned by the Berlin police, analyzed 143 allegations of bodily injury or other crimes committed by police officers where the investigations had been terminated. The study concluded that in at least 10 per cent of the cases, identity badges would have facilitated the investigations and would have increased the possibility of clarifying the allegations.⁹⁹

MM (male)

“Suddenly, our party was over when masked figures stormed in and lashed out randomly at everything that moved.”

MM

This lack of identification led to a lack of accountability in the case of MM, the victim of police ill-treatment in a music club, where police executing a warrant apprehended people who they believed were going to cause a violent disturbance in connection with a football match (see page 22). The PPO began its investigations shortly after the incident, both on its own initiative and following criminal complaints by 37 people, including MM and F. However, none of the police officers who participated in the raid was prosecuted, even though the PPO stated that the police had used excessive force in the operation. The PPO terminated the investigations on 15 November 2006 because the identity of the perpetrators could not be established. None of the witnesses questioned had been able to identify the police officers because they had been masked and had not worn name badges or identification numbers.

The PPO also terminated the investigations against the two superior police officers who had planned and commanded the raid on the club, on the grounds that they were not responsible for the excessive use of force that had reportedly been used by some police officers during the raid on the Jeton club, since they had not ordered such action.

The illegality of the police action was implicitly admitted by the land of Berlin because in at least six cases, including that of MM, it paid damages for injuries people suffered during the raid. Victims are entitled to damages only when the action that led to the damage or the injury was illegal.¹⁰⁰

Amnesty International is concerned that it was not possible to identify the police officers who had been involved in ill-treatment and, in turn, it was therefore not possible to hold them accountable. Following the police intervention at the Jeton club, the superintendent of the police of the land of Berlin had to appear in the land's parliament to provide explanations on the incident.¹⁰¹ However, Amnesty International is not aware of any internal disciplinary investigation by the police nor of any measures against the police officers. Neither is Amnesty International aware of an internal police follow-up to the incident.

AW

“Why none of the police officers involved saw anything, I don't know. I can hardly believe it, because I think they have a wrong perception of being a police officer. They should protect citizens not colleagues.”

AW in a statement to Amnesty International

In the case of AW (as described on page 23), the identity of the police officer who broke her rib could not be established. On 2 May 2007 AW filed a criminal complaint with the police. As she had a friend who was a journalist, the case was covered widely in the media. There were also pictures in the newspaper showing a police officer hitting her.

On 4 May 2007 AW was asked to testify before a male police officer from the State Office of Criminal Investigations (Landeskriminalamt) of the land of Berlin, which, among other tasks,

is responsible for investigating complaints against police officers in Berlin. In an interview with Amnesty International, AW emphasized that she found the situation very stressful because she was questioned by a male police officer. All 13 police officers who, according to the criminal investigation, might have been present when she was beaten were also interviewed by the State Office of Criminal Investigations of the land of Berlin. They all testified that they had not seen the assault.¹⁰² Furthermore, a police officer reportedly gave contradictory statements about his whereabouts during the incident. He claimed not to have been present, even though a colleague identified him in a photo taken around the time of the incident. According to AW's lawyer, the investigating unit of the State Office of Criminal Investigations of the land of Berlin did not seek clarification of this contradiction, a factor indicating the inadequacy of the investigation in this case.

A (male)

A, a Chechen asylum-seeker who suffered several fractured ribs after an incident in Chemnitz on 16 February 2005.

At about 3pm on that day, A was stopped by a shop assistant in a store on suspicion of having tried to steal a pair of trousers. After calling the police, the shop assistant blocked the exit and waited about five minutes for the police to arrive. According to A's statement, he was calm and slightly drunk. He stated that he did not notice when the police entered the store behind him, and that he only felt kicks and a heavy blow to his chest. A does not recall what happened next, but assumes that he passed out. Then he said he was dragged along the floor with his hands cuffed behind his back.

While this was happening, he could not breathe, according to his statement. In the police station he was kept in handcuffs. He reported having felt severe pains in his chest and as though his face was bruised. The police officers claimed that because A had been kicking and hitting out as he resisted being searched, he was restrained.

A says that a blood sample was taken from him after he was taken to the police station. Several hours later he was driven home by the same police officers who had arrested him. When they were around 50-100 metres away from the accommodation centre for asylum-seekers where he was living, the police officers allegedly made him get out of the car. Because of his injuries, A had severe difficulties in reaching the accommodation centre. When A arrived, a medical doctor there called an ambulance as soon as she saw him. A remained in hospital for seven days suffering from serial rib fractures and a haematoma in his chest. In hospital he required drainage of the pleural space. A pressed for his release as he did not feel safe in hospital. A had been imprisoned and tortured in Chechnya and because of this experience reportedly suffers from post traumatic stress disorder.¹⁰³

The police started investigations against A for attempted theft, and resistance to a police officer in conjunction with assault. On 13 April, these investigations were discontinued under Section 153 paragraph 1 of the Criminal Procedure Code, which allows for the termination of an investigation if the perpetrator's guilt is considered to be of a minor nature and there is no

public interest in the prosecution. According to A's lawyer, when A was questioned during the investigation he refused to give a statement because he was too afraid.

On 25 May 2007, Amnesty International sent a letter to the Minister of Interior of the land of Berlin regarding this case. In his reply the Minister of Interior emphasized that the State Office of Criminal Investigations of the land of Berlin had already started its investigations on 3 May 2007 and that he was confident that the police would carry out adequate criminal procedures and would also take disciplinary measures.¹⁰⁴

On 14 November 2007 the PPO terminated the investigation on the grounds that it was unable to identify the alleged perpetrator. This was due to the fact that none of the witnesses could identify the perpetrator.¹⁰⁵ The police officers were in riot uniforms and helmets, and were wearing neither ID numbers nor name badges. As to the testimonies of the police officers, the PPO stated that although it appeared hardly believable that none of them had witnessed the assault, it was not impossible.¹⁰⁶

AW told Amnesty International that she decided not to lodge a complaint against termination of the investigation because continuing it would be too stressful for her. She nevertheless sought compensation from the land of Berlin. The compensation was awarded eight weeks after the assault; the letter from the land of Berlin informing her of this gave no legal basis for the compensation but stressed that it had been granted without accepting legal responsibility. The speed of this investigation and the prompt payment of compensation by the land of Berlin were unique among all the cases that Amnesty International has examined. Inadequate investigations

Amnesty International is concerned that, in many cases, criminal investigations of complaints about ill-treatment are not conducted in a manner that is consistent with the requirements of international human rights law.

THE OBLIGATION TO CONDUCT AN EFFECTIVE INVESTIGATION

International human rights law places an obligation on states to carry out prompt, thorough, impartial and independent investigations into allegations of torture and other ill-treatment, including excessive use of force and cases of death in custody.

The ICCPR codifies the right to life and the prohibition of torture and other ill-treatment in Articles 6 and 7 respectively.

In its General Comment No. 20, the Human Rights Committee has clarified that:

It is not sufficient for the implementation of Article 7 to prohibit such treatment or punishment or to make it a crime... Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective¹⁰⁷

Article 12 of the Convention against Torture explicitly states:

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 13 further specifies that:

Each State Party shall ensure that any individual who alleges he has been subjected to torture [or other ill-treatment] 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.

Similarly, the European Court of Human Rights has made clear that Article 3 of the ECHR requires that there should be an effective official investigation whenever there is an arguable claim that an individual has been ill-treated by the police. In cases involving the use of force by state agents, the obligation to carry out an investigation aims at ensuring the accountability of the state agents or bodies concerned for deaths or ill-treatment that occur under their responsibility.¹⁰⁸ Specific requirements may apply regarding the effectiveness of the investigation, when it is alleged that state agents or bodies are involved in such cases. The authorities must take the initiative to act as soon as the matter has come to their attention. They cannot leave it to the initiative of victims (or in the case of death, families) to lodge a formal complaint.¹⁰⁹ The obligation to protect the right to life under Article 2 of the ECHR requires that there should be an effective and independent investigation when individuals have been killed or died, including as a result of the use of force or in suspicious circumstances¹¹⁰ This obligation forms part of the individual's right to an effective remedy before a national authority in the event of any violation of the Convention, guaranteed by Article 13 of the ECHR.

The European Court of Human Rights has clarified that, to comply with the requirements of the ECHR, investigations into allegations of human rights violations must meet the following criteria:

Prompt

Fair and effective investigations into allegations of killing or ill-treatment must be carried out promptly and expeditiously. The passage of time will inevitably erode the amount and the quality of the evidence available, and where there are delays the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts.¹¹¹

Impartial and independent

Persons responsible for carrying out the investigation must be impartial and independent from those implicated in the events. In addition to practical independence there should be no institutional or hierarchical connection between the investigators and the officer complained against. An investigation where the evidence is collected by police officers in the same unit in the same city as those under investigation would not meet these criteria. The European Court of Human Rights has stated that a police investigation carried out by direct colleagues of those allegedly involved in a case of death or ill-treatment was not sufficiently independent.¹¹²

Adequate and Thorough

The investigation should be capable of gathering evidence to determine whether the police behaviour complained of was unlawful and to identify and punish those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence and, where appropriate, an autopsy. Any deficiency in the investigation which undermines their ability to identify the perpetrator or perpetrators will risk falling foul of this standard.¹¹³

The investigative means as a whole must be reasonably employed to allow the establishment of the facts which have been alleged and if the facts have been established, to identify and punish those responsible. It

should be comprehensive in scope and address all of the relevant background circumstances and be capable of identifying any systematic failures that led to the violation. This requires the taking of all reasonable steps to secure relevant evidence such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; as well as gathering forensic and medical evidence by independent specialists. The evidence should be assessed in a thorough, consistent and objective manner.¹¹⁴

Public scrutiny

There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts.¹¹⁵

Victim involvement

In all cases, the victim or next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.¹¹⁶

FAILURE TO ACT PROMPTLY

In some of the cases that Amnesty International has examined, the investigations have not been prompt. Three examples of this concern are the investigations into the alleged ill-treatment of JM (who was allegedly ill-treated after police brought him to the station following an ID check, page 19), AD (who was allegedly ill-treated as police attempted to deport him, page 20) and RS (who was allegedly ill-treated during his arrest, page 24).

JM

On the day of the incident, 11 January 2008, JM filed a criminal complaint with the police of the land of Northrhine-Westfalia against the three Federal police officers for causing bodily injury while acting in an official capacity (see page 21 for a description of his case). He also handed in a medical certificate which attested to multiple bruises and abrasions. The Federal police filed a criminal complaint against JM for resisting law enforcement officers on 15 January.

On 13 March 2008, in the course of the investigation into JM's actions (rather than those of the police), JM was summoned for questioning by the Federal police unit to which the three officers, who were accused of ill-treating him, belonged. In response, JM sent a written statement to the unit. The Federal police told Amnesty International that they did not find it problematic that JM was summoned by this unit. The Federal police stated that the officers acted in accordance with the law when they summoned JM as part of their investigations into his resisting law enforcement officers.¹¹⁷ According to the files of the land of Northrhine-Westfalia police, they had informed the Federal police on 17 January 2008 of JM's complaint.

On 18 August 2008 the PPO submitted a bill of indictment to the local court against JM for bodily injury and resisting law enforcement officers. On 23 October 2008 the local court of Wuppertal acquitted JM. The court emphasized in its reasoning that the testimonies of the police officers were inconsistent. The judge concluded that the police officer's statement that

he had simply overpowered JM was not consistent with the multiple haematomas JM sustained. The judge took the view that the bruises on JM's neck were marks from shoes and resulted from his treatment by the police officers.¹¹⁸

Only after JM's acquittal did the PPO open investigations into the actions of the police officers against whom JM had lodged his criminal complaint on 11 January 2008. The police officers were questioned for the first time in relation to the charges against them on 25 February 2009. In the light of their testimonies, the PPO terminated the investigation on 3 March 2009 on the grounds of lack of evidence. In its very short letter of termination, which Amnesty International has examined, it justified the termination of the investigation on the basis that it could not see any reason why JM's testimony should take precedence over the testimony of the police officers.

On 16 March 2009 JM lodged a complaint against the termination of the investigation. On 29 April 2009 the Public Prosecutor General dismissed this complaint, on the grounds that even though the testimonies of the police officers were inconsistent in some parts, they were consistent in that all three officers stressed that they had to use force because JM had been aggressive. The Public Prosecutor General took no other evidence.¹¹⁹

On 26 May 2009 JM appealed against this decision to the Higher Regional Court in Düsseldorf, but his appeal was rejected. In the end, the decision turned on the inconsistency between JM's statement and those of the police officers concerned: it was his word against theirs.

In addition to the lack of promptness involved in initiating the investigation into JM's complaint of ill-treatment, Amnesty International considers that questions must be raised about its impartiality and adequacy. It is notable that while the PPO brought charges against JM to court (notwithstanding the discrepancies between the accounts of JM and the police), they did not seek to do so with regard to the complaint that JM brought against the officers. Furthermore, Amnesty International considers that the decision to terminate the investigation of JM's complaint against the officers appears to be inconsistent with the findings of fact by the Court in the criminal proceedings brought against JM.

The organization notes the contradictory manner in which the evidence was considered by, on the one hand, the Court which acquitted JM and, on the other, the PPO. The Court emphasized in the oral reasoning of its judgment as well as in the written judgment that the testimonies of the police officers had been inconsistent. The record of the questioning of the two police officers by the PPO during the investigation shows that they were not confronted with the contradictions in their testimony which emerged during the trial against JM. The Public Prosecutor General emphasized that these contradictions were not problematic because all the police officers agreed that JM had initiated the aggression.¹²⁰

AD

In the case of AD (whose account of being ill-treated when police attempted to forcibly remove him is outlined on page 20), the PPO did not initiate the investigations promptly. AD's lawyer filed a criminal complaint with the PPO because of the incident on 8 December

2005. In this complaint AD's lawyer provided the name of another person who was also meant to be deported on the same day.

On 31 January 2006, AD's lawyer asked to inspect the files held by the PPO, in accordance with Section 406e of the Criminal Procedure Code, which gives the aggrieved person's lawyer the right to inspect the files. On 27 February 2006 he reminded the PPO of his request. When AD's lawyer finally obtained the files from the PPO on 17 March 2006, they consisted of only five pages – these were the five pages he himself had submitted in order to substantiate the complaint. On 17 March 2006 he sent a complaint to the PPO for not initiating prompt investigations. By 8 May 2006 the PPO apparently still did not know the identities of the police officers who had been involved in the failed deportation on 30 November 2005. In fact, according to a note for the file by the Federal police it was only on 21 June 2006 that the PPO asked the police to question the four police officers who were accused of ill-treating AD. In what appears to be an inconsistency with the requirement that investigations be independent and impartial, three of the officers were questioned on 12 July 2006 by a member of the same unit of the Federal police to which they belonged. The fourth police officer was ill and was therefore not questioned.¹²¹ The transcripts of the three interviews, which Amnesty International has reviewed, have almost identical wording.

On 17 August 2006, the PPO terminated the investigation on grounds of lack of evidence. The grounds given for the termination suggest that the investigation had consisted solely of questioning the three police officers by the Federal police.

When the lawyer lodged a complaint against the termination of the investigation, the PPO then questioned additional witnesses.¹²² The PPO had not ensured that AD was questioned before he was deported to Turkey on 19 December 2005. Nor did they question him after his removal from Germany. Neither was another possible witness, a Congolese man who was also due to be deported on 30 November 2005, questioned; he had not been deported until 9 January 2006. In a note to the PPO, the Federal police emphasized that due to his deportation he could no longer serve as a witness.¹²³ On 9 January 2007, the Public Prosecutor General dismissed the complaint filed against the termination of the investigations because of lack of evidence. There has been no appeal against this decision.

RS

In the case of RS, who lost his right eye as a result of the incident described on page 24, there seems to have been no prompt investigation into his allegations against the police officers.

On the day of the incident (30 April 2009), the police filed a criminal complaint against RS for illegal residence, resisting law enforcement officers and bodily harm. On 12 May 2009, RS filed a criminal complaint with the Public Prosecution Office in Duisburg against the police officers for causing bodily injury during the discharge of their duties. In May 2009, the two friends of RS who had been in the car with him, as well as the man who had called the police, were questioned as witnesses by the police as part of the criminal investigation against RS. However, no such attempts appear to have been made promptly to investigate allegations of ill-treatment by the police officers. According to RS's lawyer, the investigating public prosecutor, in a telephone conversation, offered to terminate the investigation against

RS if the criminal complaint against the police officers was withdrawn. The lawyer did not accept this offer.

On 8 October 2009 RS's lawyer suggested that the PPO obtain a medical expert opinion on how his client's injuries were sustained and on 9 November 2009 he formally made the same request. He also asked to be informed of what further investigations had been initiated. RS's lawyer told Amnesty International that he received no reply to his request. In March 2010, RS was forcibly returned to Kosovo.

Amnesty International is gravely concerned that in spite of the serious allegations raised by RS and the severe injuries he suffered as a result of the incident, the PPO has not conducted an effective investigation into his case promptly and expeditiously. This is all the more of concern considering that RS has been forcibly removed from Germany in the meantime, making it more difficult to clarify the allegations now.

LACK OF INDEPENDENCE AND IMPARTIALITY

The cases of both JM and AD illustrate another source of concern: in neither case were the investigations carried out independently and impartially. In both cases, the same Federal police unit to which the accused police officers belonged was responsible for parts of the investigation into the incident. In the case of JM, the same police unit summoned JM for questioning regarding the charges brought against him, and in the case of AD, the same unit was responsible for questioning three of the four police officers who were accused of having ill-treated him.

TC

Also of concern in this regard is the case of TC, who was allegedly ill-treated by police at Lübeck station on her way home to Hamburg (see the account of these events on page 21). Here, the police officer who was suspected of having committed the offence himself conducted parts of the investigation into the incident.

On the day of the incident, 21 February 2007, TC filed a criminal complaint with the police of the land of Schleswig-Holstein against the police officer, concerning bodily injury. On the same day, the Federal police also filed a complaint against TC on the grounds of coercion, resistance to law enforcement officers, bodily injury, false accusation and insult.

On 14 March 2007 the police officer against whom TC had filed a criminal complaint wrote down the result of an information-gathering conversation which two of his fellow officers had with TC's friend. On 22 March 2007 the same police officer sent a request to TC's friend to come to the police station at which the incident in February had taken place, for questioning as a witness to the incident. After TC's friend did not appear, the police officer sent a second request. The written request, which Amnesty International has reviewed, only mentioned the following reason for wanting to question him: "The incident on 21 February 2007" without clarifying whether the investigations were directed against TC because of charges against her, or against himself because of the alleged bodily harm.

The PPO submitted a bill of indictment to the local court against TC regarding this incident. On 5 March 2008 the Lübeck local court discontinued these charges in accordance with

Section 153 paragraph 2 of the Criminal Procedure Code, which allows for the discontinuation of charges in case of petty offences.

On 27 August 2007, the PPO terminated the investigations against the police officers on grounds of lack of evidence. It claimed that it could not be established whether the injuries TC sustained resulted from the alleged assaults by the police officer or from the alleged acts of resistance by TC.

TC's lawyer lodged a complaint with the Public Prosecutor General against the termination. The Public Prosecutor General supported the termination of the investigation on the grounds that the police officers had denied the ill-treatment and because of a lack of other evidence.

TC also lodged a complaint against the termination of investigations, as a result of which the PPO reopened the investigations on 29 April 2008. Amnesty International is not aware of the outcome of this complaint.

LACK OF IMPARTIALITY OF THE PUBLIC PROSECUTION OFFICE

In some cases it appears that the PPO has not acted impartially in its handling of complaints against police. While the investigations in the case of JM are one example, another is the case of Adem Özdamar, who died in a police station (see page 13). The day after his death, the investigating public prosecutor told the press and the superintendent of the police that the police officers had probably acted lawfully.¹²⁴ The superintendent told Amnesty International that because of this statement she decided not to take immediate disciplinary measures against the police officers who were involved.¹²⁵

CRIMINAL INVESTIGATION OF COMPLAINTS OF POLICE ILL-TREATMENT IN GERMANY

The Public Prosecution Office (PPO) holds overall responsibility for pre-trial criminal investigations. It is a hierarchically organized institution. PPOs are supervised by the Offices of the Public Prosecutor General, which are subordinate to the Ministries of Justice of the Länder. The PPO is an authority that is required by law to investigate objectively, securing all available evidence, not only inculpatory but also exculpatory. The PPO may itself undertake investigations or do so "through the authorities and officials in the police force"¹²⁶. In practice, the police carry out most of the investigations.

If the police learn about a crime, they are obliged to initiate investigations and must submit records to the PPO without delay.¹²⁷ In practice, however, it is the police that carry out the investigations and then submit the files to the PPO, who then decide whether to pursue or terminate the investigations, or whether to submit an indictment to the competent court.

If complaints are investigated by police officers who have institutional links with those against whom complaints are made, there is a risk that the investigation will not be pursued with the vigour required by international standards.

The CPT has stated that in jurisdictions where a prosecutor manages the investigation:

"it is not unusual for the day-to-day responsibility for the operational conduct of an investigation to revert to serving law enforcement officials ... It is important to ensure that the officials concerned are not from the

same services as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent from the agency implicated".¹²⁸

This requires either that there be a specialist body established to investigate complaints against the police, or at least that complaints are investigated by a police force which is institutionally and operationally independent of the one against which the complaint is made.

While the majority of laender have not established specialized units within the police to investigate allegations of police misconduct, some have.

Thirteen laender have special departments in (at least some of) the PPOs, which investigate criminal matters brought against police officers.¹²⁹ In most of the laender, these special departments are responsible for criminal investigations against all public officials, including police officers. Out of the 13 laender that have established such separate departments, eight reported that these departments exist state-wide.¹³⁰ The laender of Schleswig-Holstein and Lower Saxony have specific departments, except in places where the size of the relevant agency is too small. The authorities in Baden-Württemberg, Hesse and Rhineland-Palatinate, stated that although the establishment of special departments is not required, some PPOs operate special departments.

LACK OF THOROUGHNESS

Amnesty International is concerned that several cases of alleged police misconduct, researched by the organization, were not thoroughly investigated. Amnesty International has also observed in some cases that the investigation was only carried out with the due diligence required by international law after the alleged victim had appealed against the decision by the PPO to terminate the investigation. The organization considers that in some cases insufficient efforts were made to clarify inconsistencies in the evidence that was gathered.

ER

One example of the concern about the lack of thoroughness of the investigation is the case of the ER, the 17-year-old who was badly injured when a Special Deployment Command raided his Berlin flat on the night of 29 April 2005 (see page 19). Amnesty International is concerned that the proceedings before the court started only after he lodged a complaint against the decision of the PPO to terminate the pre-trial investigation.

ER filed a criminal complaint after the incident on 30 April 2005. Seventeen months later, on 4 October 2006, he was informed by the PPO that it had terminated the investigation of his complaint. The PPO declined to reveal the names of the Special Deployment Command members who participated in his arrest to ER and his lawyer on the grounds that this would endanger the police officers.¹³¹

ER appealed against this decision to the office of the Public Prosecutor General; however, the appeal was rejected on 11 December 2006.

In January 2007 ER filed an application to the Berlin Higher Regional Court seeking to compel the bringing of criminal proceedings.¹³² This was successful: criminal proceedings against four police officers relating to bodily injury were opened before the Berlin Regional Court. However, on 24 April 2008, the accused police officers were acquitted for lack of

evidence. The court, however, ordered the land of Berlin to pay ER's legal costs.

During the court proceedings, three of the four accused officers were masked to conceal their faces. Only one of the accused police officers appeared without a mask and offered a general apology for what had occurred. The police officers claimed, however, that ER bumped into the shield.

In its oral reasoning the court emphasized that the testimony of ER was impressive due to its remarkable consistency and its lack of any tendency to incriminate. In contrast, the court stressed that the statements of the accused police officers left many questions unanswered. Moreover, the presiding judge criticized serious shortcomings in the police investigations, emphasizing that they had never sought to clarify inconsistencies in the police officers' statements. This is a significant issue because an important element in ensuring the thoroughness and effectiveness of an investigation is the clarification of inconsistencies in evidence. The judge called on the Superintendent of the Berlin police to deploy investigators who would be capable of handling such a difficult situation in similar cases in the future as they had to determine whether those who use violence on behalf of the state have themselves acted lawfully.¹³³

ER decided not to appeal against this decision and did not proceed to file a claim for compensation.

Amnesty International is concerned that the investigations into ER's complaint of ill-treatment did not meet the test of thoroughness required under the ECHR and ICCPR. As the court pointed out, the police did not thoroughly investigate contradictions and the lack of explanations in the testimony of the accused police officers when they were questioned. Amnesty International is also concerned that the PPO and the police delayed the investigation and that the trial was opened only after ER had twice complained against termination of the investigation.

Adem Özdamar

Amnesty International is concerned that the investigation in the case of Adem Özdamar, who died after being pepper sprayed and restrained face-down prone in the police station (see page 13), also lacked the thoroughness required by international human rights law. On the night of the incident the police of Dortmund started to investigate what had happened and initiated criminal investigations into bodily harm against 12 of the 13 police officers who were present in the police station. In addition, the police started an investigation against Adem Özdamar for resisting law enforcement officials. All the police officers were questioned on the morning of 17 February 2008 and they all decided to remain silent. As accused people they were entitled to remain silent pursuant to section 136 paragraph 1 CPC which corresponds to Article 14 of the ICCPR (Accused persons have the right not to incriminate themselves and therefore to remain silent). Each of the accused police officers was questioned for approximately four to seven minutes, according to the record of the questioning which Amnesty International has reviewed. In addition to the 12 police officers, the law student who was in the police station was questioned as a witness, as were the ambulance crew, who had arrived when the police officers tried to restrain Adem Özdamar, and the emergency doctor.

The investigation was carried out by the Dortmund police under the supervision of the Hagen

PPO, according to the normal practice in Northrhine-Westfalia, where investigations against police officers are always carried out by a police force from another city than the city to which the unit of the accused police officers belongs.

The PPO terminated the criminal investigation in August 2008 concluding that the force used to restrain Adem Özdamar and to secure him to the stretcher were proportionate. The PPO also claimed that the restraints used to secure him to the stretcher did not lead to Adem Özdamar's death. In doing so it relied on the findings of the autopsy that had been commissioned by the PPO which concluded that there was a high probability that massive consumption of cocaine had triggered bleeding in his left cerebrum, causing his death. In addition, the PPO stated that positional asphyxia could be excluded.

The lawyer acting for Adem Özdamar's family requested that the PPO obtain a second opinion from a medical expert who was a specialist in cases of positional asphyxia but this request was denied.

The lawyer also requested the Public Prosecutor General to transfer the investigations to the PPO of another city because he was concerned that the PPO of Hagen would not investigate impartially. According to Amnesty International's information the Public Prosecutor General did not react to this request.

The lawyer appealed to the Public Prosecutor General against the PPO's termination of the investigation on the grounds that the investigations had not been thorough enough and that not all possible witnesses had been questioned. The lawyer contested the findings of the medical expert and requested that the doctors of the hospital who had treated Adem Özdamar should be questioned as witnesses. However, the Public Prosecutor General rejected the complaint.

Amnesty International is concerned that the circumstances of the incident at Hagen police station were not clarified sufficiently. The PPO did not seek clarification of the question of why Adem Özdamar was taken to the police station. It also did not address the allegations that Adem Özdamar had suffered haematomas on his face. The doctors who had treated him in hospital were not questioned as witnesses during the investigations.

It appears from the files of the PPO that it did not seek to clarify how many police officers were involved in restraining Adem Özdamar. In the absence of video recording in the police station it was also not possible to clarify whether the police officers had used excessive force when restraining Adem Özdamar. Amnesty International is also concerned that the Public Prosecutor General did not react to the request of the lawyer to transfer the investigations to another PPO because he was concerned about the lack of impartiality of the PPO of Hagen.

The Hagen police held an internal 1.5-day follow-up session with the police officers who were present at the police station on the night of 17 February 2008, in order to analyse the incident. The superintendent of the police of Hagen told Amnesty International that during this training, the police officers were given some retraining in dealing with people with mental health problems, and how to restrain people who are behaving aggressively. Part of this follow-up also included the question of how to communicate with migrants.

The police of Hagen did not take any disciplinary measures against any police officer in relation to the treatment of Adem Özdamar, nor were any police officers suspended from duty during the investigations.

Oury Jalloh

“The acquittals are not based on anything we could establish about what happened that day. That, what has been offered here, was not the rule of law, and police officers, being specially obliged to follow the rule of law, made clarification impossible. All these police officers who lied to us are police officers who have no place in this country.”

Presiding Judge Steinhoff’s oral reasons for the judgment on 8 December 2008.

Amnesty International is also concerned that to date there has not been a thorough investigation in the case of Oury Jalloh; he burned to death while tied to a bed in a cell in the basement of Dessau police station on 7 January 2005 (see page 13). While the investigation into his case is still pending, earlier parts of it have to be considered inadequate.

During the oral proceedings of the trial, the Dessau Regional Court pointed out that it had not been possible to establish the facts because of the lack of thorough investigation and because of the behaviour of the police officers who had been questioned during the oral proceedings of the trial.

Immediately after the incident, police officers from the city of Stendhal who were specialists in arson and fire crimes took over the investigation. It was four months before the PPO charged one police officer with manslaughter and another with inflicting bodily harm and causing death. However, it took another 18 months before a trial could start because on 17 October 2005 the Regional Court Dessau refused to open the hearing against one of the accused police officers because the Court considered that the investigation had not gathered sufficient evidence.¹³⁴

When the PPO and the family of Oury Jalloh filed a complaint to the Higher Regional Court against this decision, the Higher Regional Court ordered the Regional Court to open proceedings against both of the accused police officers. In addition, a second autopsy was initiated by the victim’s family which established that the victim had a fractured nose and an ear injury, which had not been discovered in the autopsy ordered by the PPO.

In March 2007, more than two years after Oury Jalloh’s death, oral proceedings before the Dessau Regional Court were opened. During the proceedings, the reasons for his fractured nose and ear injury could not be established.

Despite 59 days of oral proceedings and the questioning of over 50 witnesses, the court considered that it was unable to establish the truth about the incident. The accused police officers were acquitted. The judge, however, lambasted the police officers and their colleagues for giving false testimony, protecting the accused and perverting the course of justice. Following the oral proceedings, charges of perjury were pressed against one police officer who had testified in the criminal trial of the accused officers as a witness. The superintendent of the police of Dessau told Amnesty International that no disciplinary proceedings had been started against the police officers.¹³⁵

The Regional Court also criticized the investigations because the documentation of the questioning of police officers who had been present in the police building on 7 January 2005 by the police of Stendhal had been incomplete. Therefore, several police officers who testified differently in the oral proceedings argued that the documentation of their initial questioning had been incorrect. In addition, the investigating officers from the Stendhal police did not question all police officers who had been present in the police building on 7 January 2005. Some police officers testified for the first time in the oral proceedings.¹³⁶

An appeal on points of law was brought before the Federal Court of Justice. In line with the judges' critical questions at the hearing in December 2009, in a judgment of 7 February 2010, the Federal Court of Justice quashed the acquittals of the police officers. The case has been transferred to another trial court. The latter has not yet opened the proceedings because it has not received the files.¹³⁷

In its ruling, the Federal Court of Justice doubted that the Dessau Regional Court had really assessed the facts correctly. In particular, the Federal Court considered that the time that elapsed between the fire alarm and Oury Jalloh's death had not been accurately reconstructed.¹³⁸ Furthermore, the Federal Court of Justice criticized the fact that the accused police officer first switched off the alarm, then phoned his superior police officer, then started to run to the cell but had to turn back because he had forgotten to fetch the keys for the restraints on Oury Jalloh's ankles.¹³⁹ Furthermore, the Federal Court of Justice criticized the behaviour of the police officers on duty, considering that they had most likely violated a binding regulation of the land of Saxony-Anhalt which requires that a person who is under the influence of drugs or alcohol be detained only if they are kept under constant surveillance by two police officers.¹⁴⁰

Following the death of Oury Jalloh, the police in Saxony-Anhalt restructured the system of police custody. They introduced special custody units which consist of police officers who have had special training. Additionally, monitoring of detainees has been tightened up: police officers are now required to keep records of their monitoring of detainees. The police had sought to introduce video monitoring of the custody cells; however, the data protection office refused permission because it would need a law and not an internal regulation. Only the corridors to the custody cells are currently monitored by video cameras.

The accused police officers on duty when Oury Jalloh burned to death in the cell remain in office but they are no longer working at the same police station.

Jendrik Thiel

Also in the case of Jendrik Thiel, who committed suicide with his shoe laces while in a police cell (see above on page 14), the initial investigation into his death was inadequate.

After Jendrik Thiel's death, investigations against the police officers for negligent manslaughter were initiated. Initially, the identities of the police officers who took him into custody and who were responsible for searching him could not be established. According to the police officers' testimonies, Jendrik Thiel was visited in his cell at around 1.10am and was found dead at around 1.20am. The emergency call was recorded at 1.18 am which, as Jendrik Thiel's family pointed out to the PPO¹⁴¹, leaves an extremely short time for the highly

intoxicated young man to have made preparations and committed suicide if he was last visited at around 1.10am. In addition, his family pointed out that, according to his friends who were also detained in a different cell at the Berlin-Tempelhof custody centre, nobody had come to their cell until after Jendrik Thiel had committed suicide. Jendrik Thiel's friends have not been questioned as witnesses during the investigation.

The PPO terminated the criminal investigation on 11 March 2009, claiming that it was not impossible for Jendrik Thiel to have committed suicide within 8-15 minutes, that is the time between the last control of the cell at around 1.10am and the time when he was found strangled at around 1.20 am and that there had been no reason for the police to take away his shoe laces.¹⁴² With regard to the fact that Jendrik Thiel was placed in a cell on his own, the PPO considered that the action of the police in isolating him was justified on the grounds that he had behaved aggressively and therefore had to be separated from his friends.¹⁴³

The complaint against this decision lodged by the family to the Office of the Public Prosecutor General was rejected. The Public Prosecutor General pointed out that Jendrik Thiel's suicide had been unpredictable. On 26 June 2009 the family's appeal against this decision was deemed inadmissible by the Berlin Superior Court of Justice on the grounds that the account of the facts was insufficient.

It was only after Jendrik Thiel's mother filed a petition to the competent parliamentary body of the land of Berlin in November 2009, that the identity of the police officer who had locked Jendrik Thiel in a cell was established and a document produced which recorded the items that were taken away from him when he was taken into custody.¹⁴⁴ Jendrik Thiel's mother told Amnesty International that as a result of this new information, the PPO restarted a criminal investigation.

JE

In the case of JE, who alleged that a police officer broke his jaw after he had been arrested on 16 July 2007 (see page 18), thorough investigations were not carried out until JE appealed to the Court against the termination of the case by the PPO.

JE lodged a criminal complaint with the PPO on 29 July 2007. He also wrote a letter to the superintendent of the police of Stuttgart, who decided to meet with JE in order to discuss the incident. On 28 December 2007 the PPO informed JE that it had terminated the investigation on the grounds that there had not been enough evidence to prove that JE had not fractured his jaw prior to being apprehended by the police. However, the PPO had not questioned JE's girlfriend who had been suggested as a witness by JE.

Due to the inadequate investigations, JE's lawyer filed a complaint against the termination of investigation, pointing to the fact that a sales assistant had seen JE eating something shortly before he was arrested and that she could testify that JE's jaw had not been broken before his encounter with the police. This complaint was dismissed by the Public Prosecutor General on 19 February 2008, who considered that there was not enough evidence that the jaw was broken in the police station because JE had a beard, so it was not necessarily possible for the girlfriend and shop assistant to see whether JE's chin had been swollen when he was arrested.

On 19 March 2008 the lawyer appealed to the Higher Regional Court of Stuttgart against the dismissal of his complaint. In April 2008, the Public Prosecutor General ordered new investigations after the Higher Regional Court suggested a further investigation into whether JE was already injured at the time of his arrest. As a result, the PPO resumed the investigations and inter alia questioned the witnesses involved and submitted a bill of indictment to the local court.

On 22 January 2009, the local court acquitted the police officer, concluding that it could not be proved that he had injured JE. While JE had testified that he was hit on the left side of his face with the right hand, the medical expert who gave evidence in the oral proceedings argued that because of the character of the injury, this would not have been possible. In addition, the police officer was left-handed. Because of this inconsistency, the court acquitted the police officer.

After the proceedings, JE told Amnesty International that he could no longer recall whether he had been hit on the left or right side of his face, and that he had assumed that he was hit on the left side because this was where he had felt pain.

KI

Amnesty International is also concerned that the criminal investigation of photo-journalist KI's allegation that she had been ill-treated by police when taking pictures of the G8 summit was not thorough (see page 24).

On 2 June 2007, the day of the event, KI filed a criminal complaint against the police officers involved. She went to a medical doctor who treated her injuries. According to KI she had her laptop with her and told the police officer that she had photos on her laptop. According to KI the police officer refused to look at the photographs on her computer and told KI that the police would question her later on and that she could then also show her photos.

On 9 July 2007, about a month after the incident, KI received a letter from the PPO informing her that the investigation had been terminated because the suspect police officers could not be identified.

On 20 July 2007 KI lodged a complaint against termination of the investigation. Because of her complaint, the investigation was reopened but she was not informed of this. According to KI, on 23 July 2007 she delivered her photos to the PPO. She only learned about the re-opening of the investigation when, on 24 September 2007, she complained that she had not yet heard anything.

In December 2007, KI's lawyer claimed compensation for material and non-material damage and asked for access to the records related to her complaint. On 21 January 2008 the police unit in Rostock which investigated the case sent a letter to the attorney stating that a response was not yet imminent due to lack of resources. On 1 February 2008 the lawyer reminded the police of her request to obtain access to the files.

In February and March 2008, KI's lawyer reportedly asked the PPO why members of the

identified police unit had not been questioned, and suggested the possibility of questioning KI as a witness. But it was not until 6 May 2008, almost one year after the incident, that KI was questioned on the phone by the Rostock police about it and offered the chance to identify the perpetrators. According to KI, she sent her photos, which she said might enable them to identify the individual officers concerned. Two weeks later, the police reportedly called KI to inform her that, because of outdated technology, the CD could not be opened and printed. Reportedly, they also said it would also not be possible for them to consider photos sent as an jpg-attachment to an email because of security risks. In response, KI then sent the photos by email as pdf-documents but the police reportedly informed her on the phone that it was too costly for them print these. However, several police officers who appeared on the photos were then questioned by the police.

On 11 November 2008, nearly a year and a half after the event, the police asked for KI's helmet so they could examine the scratches that were made as a result of the beating. On 25 September 2009, the PPO terminated the investigation, claiming that the police officers could not be identified and that KI was dressed like a violent demonstrator because she wore a helmet.

KI's complaint against that decision was dismissed by the Public Prosecutor General's Office on 3 March 2010 on the grounds that the police officers who allegedly ill-treated her could not be identified with sufficient certainty. KI refrained from appealing against this decision before the Higher Regional Court. She told Amnesty International that she did not pursue the case further because doing so would have taken too much time and stress and she lacked trust in the state.¹⁴⁵

PW¹⁴⁶

*"I heard something split and crack, felt a blow on my shoulder, then one on my forehead and one on the back of my head. Then I passed out."*¹⁴⁷

PW describing his treatment by the police

On 24 August 2004, after a quarrel with his girlfriend, 44-year-old PW drove while drunk on the highway (Autobahn) in Bonn. A police car chased him after having been informed that he was driving while drunk. The cars collided and, having stopped PW's car, the police officers broke into it by smashing the window with a truncheon.¹⁴⁸ In the car, PW was allegedly beaten with a truncheon and suffered severe injuries to the head and multiple haematomas, and was admitted to hospital.¹⁴⁹ According to media reports, the operational report by the police stated that PW had intentionally crashed into the police car, the police officers had unsuccessfully tried to open the door of PW's car and had had to get in by smashing the window with a truncheon.

Later on, a bill of indictment was submitted to the local court against PW for negligently endangering road traffic (driving while under the influence of alcohol and thereby endangering the life or limb of another person or property of significant value), negligent bodily harm and leaving the scene of the accident without cause.

In September 2005, court proceedings against PW were opened. During the proceedings, the judge identified a video which the police had on their files but which the prosecution had not

looked at during the pre-trial investigations. In a letter to Amnesty International the PPO stated that they had known about the existence of the videotape, but had considered that it had not been necessary to watch the video as there had been no criminal investigations against PW for intentionally ramming the police car and causing dangerous disruption to road traffic.¹⁵⁰ This video had been filmed by the police and showed that the accusation that PW had rammed the police car was false and that no attempt had been made by the police to open the door of the car.¹⁵¹

PW was convicted for driving under the influence of alcohol. In July 2007 a trial began in Bonn local court against one of the police officers involved, for causing bodily injury. The police officer was acquitted because the events in the car could not be established. The presiding judge raised serious allegations against the police. She had the "impression that an assault by the police had been covered up". The proceedings against the second police officer for bodily injury were terminated according to Section 153a of the Criminal Procedure Code on condition of payment of €2,500.

CONCLUSIONS AND RECOMMENDATIONS

In this report Amnesty International has highlighted its continuing concerns about ill-treatment by police in Germany and inadequate responses to it. In particular, in many cases of alleged ill-treatment that Amnesty International has investigated over the last five years, the authorities have failed to meet their obligations under international human rights law to ensure that prompt, independent, impartial and thorough investigations were carried out, those responsible were brought to justice and the victims of such treatment received adequate reparation.

Amnesty International is concerned that the current system, in which the police carry out the criminal investigations under the supervision of the PPO, is not guaranteeing prompt, impartial, independent and thorough investigations into all cases of alleged human rights violations by police officers. The organization is concerned that these failures may be creating a climate of impunity and may be undermining the confidence members of the public should have that no one in Germany, including the police, is above the law.

Consequently, Amnesty International calls on the German authorities to take steps to improve the current system. In particular, the organization urges the relevant authorities to actively consider establishing independent police complaints bodies, as recommended by the Commissioner for Human Rights of the Council of Europe,¹⁵² and the CPT.¹⁵³

In addition to improvements in the investigating process, steps need to be taken to ensure that victims of human rights violations are not discouraged from filing a complaint.

Furthermore, Amnesty International urges the authorities to take measures without delay to ensure that police officers, when performing law enforcement functions (including those of arrest, detention and using force), can always be easily and individually identified.

RECOMMENDATIONS

On identification of police officers

Amnesty International calls on the governments of the laender as well as the Federal government to ensure that police officers are individually identifiable at all times when they are carrying out law enforcement functions, by means of individual identity badges worn visibly on their uniform, including when they are wearing special gear, such as helmets or other protective clothing.

Plainclothes officers carrying out policing functions such as arrests or identity checks or using force in the context of their law enforcement functions should identify themselves to the individual concerned and, on demand, to others witnessing the event.

On video and audio surveillance in custody areas of police stations

Amnesty International recommends the establishment and extension of video and audio surveillance in all areas of police stations where detainees may be present, except where this would violate the detainee's right to privacy or to confidential communications with their counsel or a doctor. Recordings should be kept in a secure facility for a reasonable period of time. Measures should be taken to ensure that they are available for viewing by investigators, individuals who have made a complaint including, in the case of death, the families of such persons, and their representatives.

On safeguards in custody

Amnesty International calls on the authorities to ensure that custody areas be staffed by officers who have received specialist training for such duties, including human rights training in connection with their heightened duty of protection for the rights of people in their custody.

Custody staff must be required to maintain a custody record in respect of each detainee, to record all matters relating to custody and relevant action taken, including with regard to the individual's safety and well-being, and including the timing of visits to monitor them in the cells and by which officer.

All persons taken into custody for any reason, including for verifying identity, should have prompt access to a lawyer. Moreover, the right of people in police custody to consult a doctor should be respected in every case. A doctor should always be called without delay if a person in police custody requests a medical examination and when necessary to receive medical treatment. The authorities should ensure that all law enforcement personnel are made aware of their duties to ensure that assistance and medical attention are rendered to any injured or affected person in their custody whenever necessary.

On training and human rights education

In line with Principle 42 of the CPT standards on impunity, senior officers should send a clear message to subordinates that torture and other ill-treatment, excessive use of force and racism will not be tolerated and will be met with severe disciplinary sanctions and, in cases in which a criminal offence has been committed, criminal sanctions. This should be reflected in induction and continuing police training.

Amnesty International recommends that all police officers receive regular training in the legal, safe and proportionate use of force, including the use of firearms, pepper spray and restraint techniques.

Police should in particular be given regular training in techniques for restraining people who may be agitated or suffering from mental illness, and the need for continual and regular monitoring of detainees who are intoxicated, agitated or in other respects may be at risk. Operational training in all areas of law should include relevant human rights standards, including their practical application. With regard to the lawful use of force training should be provided on the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.

Human rights education should be an integral and compulsory part of the basic and regular training of all police officers; the legal training of police officers should familiarize officers

with Germany's human rights treaty obligations and other human rights standards relevant to the carrying out of their duties and should stress the importance of adherence to those standards. Human rights education should include education on the prohibition of discrimination.

On information about how to make a complaint

Amnesty International calls on the authorities to ensure that information about the possibility of and processes for filing complaints about police misconduct is made available and widely publicized. Such information should be prominently displayed in all police stations in all of the laender and in Federal Police stations, including in custody areas. This should also include the information that criminal complaints can be filed not only with the police, but also with the Public Prosecution Office and with a court. Translations of such information into relevant languages, in addition to German, should be made available.

On investigation of complaints against the police

Amnesty International calls on the prosecution authorities to:

- Ensure that any representation made to the police, the Public Prosecution Office or a court, which could constitute a complaint should be acknowledged and looked into. For this purpose there should be introduced appropriate forms for acknowledging receipt of a complaint and confirming that the matter will be pursued;
- Conduct prompt, effective, impartial and independent investigations wherever there are reasonable grounds to believe that law enforcement officials may have committed a human rights violation or whenever a complaint is made to them of this nature;
- Ensure that, in any case where there are counter complaints, by an individual making a complaint against the police and by police, for example, alleging resistance to law enforcement officers, neither complaint is used to undermine the investigation of the other; scrutinize allegations of resisting law enforcement officers carefully, especially when these are filed against individuals who have already filed complaints of ill-treatment against the police;
- Refrain from making public statements that indicate a view of the veracity of a complaint against a law enforcement official while the investigation is pending, in order to avoid any perception of bias.

On victims' rights

Amnesty International calls on the authorities to take the steps necessary to ensure that all victims of human rights violations be able to exercise their right to an effective remedy and obtain reparation, including compensation.

The authorities should inform complainants of any disciplinary proceedings being brought and of the outcome of such proceedings.

On independent police complaints bodies

Amnesty International recommends, in line with the recommendations of the CPT and the Commissioner for Human Rights of the Council of Europe, the establishment of independent

police complaints bodies, to examine all allegations of serious human rights violations including incidents which raise issues under Article 2 or 3 of the ECHR. These bodies should comply with the following criteria. They should:

- Be mandated to investigate all allegations of serious human rights violations by law enforcement officials, including deaths in custody, killings, torture or other cruel, inhuman or degrading treatment, and racism;
- Have the capacity to receive, register and investigate complaints made by any individual, and to investigate incidents on their own initiative in the absence of any specific complaint;
- Have all necessary powers, authority and resources to conduct investigations into alleged human rights violations by law enforcement officials, including:
 - The power and resources to immediately examine the scene of the incident;
 - The power to summon witnesses and to order the production of evidence and documents;
 - The power to monitor investigations in the course of any criminal investigation into a case referred for prosecution by the independent body;
 - The power to supervise or direct the investigations of the law enforcement agencies' internal inspectorates/disciplinary units when considered necessary, and the power to replace the investigative functions of these bodies in cases of serious human rights violations;
- Have no hierarchical or institutional links with the police;
- Be adequately staffed and resourced and headed by professionals of acknowledged competency, impartiality, expertise, independence and integrity. They should have at their disposal their own body of independent expert investigators to investigate complaints;
- Have the power to refer a case directly to the prosecuting authorities for criminal prosecution where appropriate;
- Have the power to order the instigation of disciplinary proceedings and to require the disciplinary body to report back to the complaints body on the results of disciplinary proceedings;
- Have the power to make binding decisions that apologies should be granted or criticisms made, and to recommend that the victims receive adequate reparation;
- Have the powers to carry out, including on their own initiative, investigations into emerging patterns of violations, with a view to making relevant recommendations to relevant authorities;
- Be widely publicized, including through materials in police stations giving information

about the means of making a complaint to these bodies;

- Issue public reports and reports to the Parliament on a regular basis.

On a specialized unit of the Public Prosecution Office dealing with complaints against police officers

To deal with cases where complaints against the police lead to criminal prosecution of police officers, Amnesty International recommends that all laender establish and maintain specialized units of the Public Prosecution Office which are responsible for investigating allegations of criminal conduct by police officers. When establishing these units, the laender must ensure that the close cooperation between the Public Prosecution Office and the police on various criminal matters does not undermine the independence or impartiality of the Public Prosecution Office in such prosecutions.

On independence and impartiality of police investigations of complaints against police officers pending the establishment of an independent police complaint mechanism

Those entrusted with the operational conduct of investigations into complaints against the police should be independent from the agency implicated. The authorities must take all necessary measures to ensure that investigations are not carried out by officers of the same unit as, or who have an institutional or hierarchical relationship with, those under investigation. To this end, Amnesty International recommends that specialized units or departments of the police investigate complaints against the police pending the establishment of an independent police complaint mechanism.

ENDNOTES

¹ *Germany: Back in the spotlight*, 14 January 2004, AI Index: EUR 23/001/2004.

² These cases do not include the cases that have featured in the German news media in recent years. Amnesty International has taken note of a significant number of further instances of ill-treatment that were reported in the press. For example, since 2006, more than 100 cases of alleged police misconduct have been reported in major national newspapers (*Die Tageszeitung*, *Frankfurter Allgemeine Zeitung*, *Süddeutsche Zeitung*, *Stuttgarter Zeitung*, *Kölnische Rundschau*).

³ In its 2004 report Amnesty International raised concern about ongoing allegations of ill-treatment by German police, including the use of excessive force against detainees, generally in the course of arrest or in police custody. In addition, the report highlighted concerns about alleged ill-treatment, including excessive use of force, against foreign nationals who were subject to removal orders from Germany. The report also highlighted several incidents in which unarmed individuals were shot dead by the police. It concluded with recommendations aimed at redressing the apparent shortcomings in practice identified, and at ensuring the accountability of those responsible for human rights violations.

⁴ In the Criminal Code the offence of “bodily injury in public office” refers to the offence being committed by a person during the discharge of his/her duties.

⁵ Abandonment means to place or leave a person in a helpless situation, exposing them to the risk of death or serious harm to their health.

⁶ Anordnung über die Erhebung von statistischen Daten bei den Staats- und Anwaltschaften (StA-Statistik).

⁷ Amnesty International has been informed that this data is expected to be published in August 2010. Letter of the Bundesjustizamt of 12 April 2010.

⁸ Germany ratified the Optional Protocol to the Convention against Torture in August 2008, Bundesgesetzblatt II 2008, Nr. 32. The national preventive mechanism was established by an organizational decree of the Federal Ministry of Justice, Bundesanzeiger Nr. 182, S. 4277.

⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/13/39/Add. 5, 5 February 2010, para. 164.

¹⁰ According to German law, a prison sentence of up to two years can be suspended. It may be executed if the convicted person is convicted of a subsequent crime or if he or she does not abide by the terms and the conditions of the suspended sentence (Section 56 and 56 of the German Criminal Code). This offence carries a minimum sentence of one year for less serious cases (Section 227 para. 2 of the German Criminal Code). However, the judge argued that there were three main reasons for reducing the sentence: firstly, the accused had confessed; secondly, the accused had not been trained adequately but, on the contrary, had been exposed to the situation without any kind of adequate training; thirdly, it would cause undue hardship if the accused lost their jobs as a result of the sentence (since sentences of more than a year lead to compulsory dismissal from public office).

¹¹ Bestimmungen über die Rückführung ausländischer Staatsangehöriger auf dem Luftweg, BRAS 120.

- ¹² The deportation supervisor is appointed and advised by a forum consisting of NGOs, the UN High Commissioner for Refugees (UNHCR), representatives of both the Protestant and Catholic Churches, delegates from local and state government as well as a member of the airport police force. Half of the budget of the deportation supervisor is covered by the Ministry of the Interior of the Land of North Rhine-Westphalia, the other half is covered by the Protestant Church and its charitable organization.
- ¹³ The law that governs the status of a civil servant requires that a civil servant must be dismissed from the civil service if he is sentenced to more than 12 months of imprisonment. The Federal Disciplinary Law and the Disciplinary Laws of the Länder are similar.
- ¹⁴ Uwe Behrendes, Cologne police, interviewed on 30 June 2009.
- ¹⁵ Written Judgment of the Berlin Regional Court, 21 November 2003.
- ¹⁶ In such situations, the force used must be strictly proportionate to the achievement of the permitted aims. See e.g. *Salman v Turkey*, judgment of 27 July 2000, para. 98.
- ¹⁷ See *Keenan v UK*, judgment of 3 April 2001, para. 89.
- ¹⁸ Extrajudicial, summary or arbitrary executions: Interim report submitted to the UN General Assembly by the Special Rapporteur, UN Doc. A/61/311, 6 September 2006, paras. 51-54.
- ¹⁹ CPT Standards, 2009 edition (CPT/Inf/E (2002) 1, Rev. 2009), p. 13, paras. 48-49.
- ²⁰ *Keenan v. UK*, judgment of 3 April 2001, para. 91; *Salman v Turkey*, judgment of 27 July 2000, para. 99.
- ²¹ Written judgment of Dessau Regional Court, p. 6s.
- ²² Written judgment of the Dessau Regional Court, p.17.
- ²³ CPT Standards, 2009 edition, p. 17, para. 53.
- ²⁴ Facts established in the written judgment of Dessau Regional Court, p. 12.
- ²⁵ Written judgment of Dessau Regional Court, pp. 53ss.
- ²⁶ This paragraph summarizes the facts that were established by the Regional Court Dessau, see written judgment of the Regional Court Dessau, pp. 12ss.
- ²⁷ The written judgement of the Dessau Regional Court dealt extensively with this question on pp. 58ss.
- ²⁸ Written judgment of the Dessau Regional Court, p. 17.
- ²⁹ Written judgment, pp. 7s. "...Polizist: "Piekste mal nen Schwarzafrikaner.", Arzt:"Ach du Scheiße", P.: Lachen, Arzt: "Da finde ich immer keine Vene bei den Dunkelhäutigen"., P.: "Na bring doch ne Spezialkanüle mit"., Arzt: "Mach ich, alles klar, bis gleich".
- ³⁰ Written judgment, p. 18.
- ³¹ Interview on 28 July 2009.
- ³² All the following information stems from the files of the Public Prosecution Office.
- ³³ CPT Standards, 2009 edition, p. 45, para. 38.

- ³⁴ CPT standards, 2009 edition, pp. 43-44, para. 34.
- ³⁵ Testimonies of the police officers during the investigations of the PPO.
- ³⁶ Geschäftsweisung Dir ZA Nr. 3 / 2005 über den Täglichen Dienst im Referat Gefangenwesen der Direktion Zentrale Aufgaben, Ziff. 5.3.4.
- ³⁷ Polizeidienstverordnung 359 (BE), Ziff. 3.2.3.
- ³⁸ Geschaeftsanweisung 03/2005, No. 5.3.4. and No. 5.3.2. Also PDV 359 (BE).
- ³⁹ Finding of the PPO, testimony of one police officer.
- ⁴⁰ CPT Standards, 2009 edition, pp. 13-14, para. 48.
- ⁴¹ Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 27 April 2005, para. 19.
- ⁴² According to Article 16 of the UN Convention against Torture, the obligations contained in Articles 10, 11, 12, and 13 also apply to other acts of cruel, inhuman or degrading treatment or punishment.
- ⁴³ UN Convention against Torture Article 10 para 1.
- ⁴⁴ UN Convention against Torture Article 11.
- ⁴⁵ For example, Article 4 of the Constitution of Thuringia, Article 16 of the Constitution of Saxony, Article 5 of Constitution of the land of Rhineland-Palatinate.
- ⁴⁶ General Assembly Resolution 34/169 of 17 December 1979.
- ⁴⁷ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
- ⁴⁸ See report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc A/61/311, 5 September 2006, para. 35; see also Nigel Rodley, *The Treatment of Prisoners under International Law*, 3rd ed., pp. 257-8.
- ⁴⁹ Gesetz über die Anwendung unmittelbaren Zwangs bei der Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Landes Berlin.
- ⁵⁰ The CPT Standards (CPT/Inf/E (2002) 1 - Rev. 2009), pp. 6,10,11.
- ⁵¹ Employees at the supermarket, when shown photographs in a police folder, had declared that ER was probably the robber. However, they later excluded ER as the robber when they saw him in an identity parade.
- ⁵² Written judgment of 24 April 2008, of the Berlin Regional Court.
- ⁵³ Testimony of ER before the Berlin Regional Court during the oral proceedings as summarized in the written judgment of 24 April 2008.
- ⁵⁴ Statement to the police by one of the officials from the Aliens Authority, in which he said that JM had appeared to be an "alien".
- ⁵⁵ The CPT Standards (CPT/Inf/E (2002) 1 - Rev. 2009), pp. 41, 43.

- ⁵⁶ The CPT Standards, (CPT/Inf/E (2002) 1 - Rev. 2009), p. 80.
- ⁵⁷ Special Deployment Commands consist of specially trained police officers who are deployed in difficult situations.
- ⁵⁸ The incident at the Jeton Club was the subject of a Parliamentary hearing at the parliament of the land of Berlin on 29 August 2005. The superintendent of the Berlin police was questioned at this hearing and stated that the police had not faced any violent resistance when raiding the club.
- ⁵⁹ Decision of the Berlin local court, 30 August 2006.
- ⁶⁰ Her medical certificate has been viewed by Amnesty International.
- ⁶¹ ICERD, Articles 6 and 7.
- ⁶² ECHR, Article 14.
- ⁶³ ICERD, Article 1(1).
- ⁶⁴ ICERD, Article 2(1).
- ⁶⁵ ICERD, Article 6 and 7.
- ⁶⁶ European Code of Police Ethics, Rec (2001)10, para. 30.
- ⁶⁷ See *Amnesty International Recommendations to Governments for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR)*, AI Index: IOR 41/002/2001.
- ⁶⁸ Standards, 2009 edition, p. 80, para. 23.
- ⁶⁹ According to Section 194 para 1 of the Criminal Code, insult can be prosecuted upon request only.
- ⁷⁰ According to Section 153a of the Criminal Procedure Code, the Public Prosecution, or once the trial has started, the court can terminate proceedings with the consent of the accused and concurrently impose conditions and instructions upon the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle. One possible condition is to pay a sum of money to a non-profit-making institution or to the Treasury.
- ⁷¹ Bavaria, Berlin, Bremen, Hesse, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt, Schleswig-Holstein and Thuringia.
- ⁷² Baden-Württemberg and Saxony and Saarland.
- ⁷³ Brandenburg, Hamburg, Lower Saxony and Saarland.
- ⁷⁴ Bavaria, Hesse, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt and Schleswig-Holstein.
- ⁷⁵ See ECHR Articles 2, 3 and 13, and judgments of the ECHR including in the case of *Z and Others v the United Kingdom*, para. 109, *Kaya v Turkey*, *Salman v Turkey*, *Keenan v the United Kingdom*; ICCPR Articles 6,7 and 2(2) and 2(3) and UN Human Rights Committee, General Comment No. 31, paras. 15, 16; CAT Articles 12, 13, 14 and 4.
- ⁷⁶ UN Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13, paras. 15-18.

⁷⁷ The CPT standards, p. 84.

⁷⁸ The CPT standards, p. 88.

⁷⁹ See *Selmouni v. France* [GC], 28 July 1999, para. 87; *Berktaş v. Turkey*, 1 March 2001, para. 167; *Altay v. Turkey*, 22 May 2001, para. 50.

⁸⁰ Unnatural death means death caused by some externally inflicted event, (not age, illness etc). This means a death such as suicide, or the result of an accident or of a criminal offence. Following an unnatural death the public authorities and police have to give notice to the Public Prosecution Office (Section 159). If the prosecutor has an initial suspicion that a criminal offence could have been committed he or she is obliged to initiate criminal investigations (Section 152 para. 2, 160 para. 1). But this is not automatic with unnatural deaths.

⁸¹ Baden-Württemberg, Bavaria, Mecklenburg-Western Pomerania, Northrhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony and Saxony-Anhalt.

⁸² See for example the Federal Disciplinary Act or the Disciplinary Act of the land of Berlin.

⁸³ See e.g. Federal Disciplinary Act, Section 14.

⁸⁴ The Ministry of Justice of Thuringia was the only one not to reply. Berlin, Brandenburg, Hamburg, Hessen, Lower-Saxony, Saxony and Schleswig-Holstein provided further data.

⁸⁵ The number of investigations rose from 278 in 2007 to 548 in 2008.

⁸⁶ Singelstein, Tobias, Institutionalisierte Handlungsnormen bei den Staatsanwaltschaften im Umgang mit Ermittlungsverfahren wegen Körperverletzung im Amt gegen Polizeivollzugsbeamte, in: Monatschrift fuer Kriminologie und Strafrechtsreform 2003, p. 1ss.

⁸⁷ CPT Standards, 2009 edition, p. 89 para. 39.

⁸⁸ There is no rule that forbids the taking of pictures. Police officers are protected as other persons regarding the publication of pictures; however, the taking of pictures is not forbidden and does not justify the confiscation of the camera.

⁸⁹ See for example Article 17 of the Basic Law.

⁹⁰ Conclusions and recommendations of the Committee against Torture: Germany 11/06/2004, CAT/C/CR/32/7.

⁹¹ Schleswig-Holstein, Sachsen-Anhalt, Northrhine-Westphalia, Lower-Saxony, Mecklenburg-Vorpommern, Hamburg and Brandenburg have information about complaints procedures on their websites.

⁹² Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009.

⁹³ Special Deployment Commands exist in all Länder as well as within the federal police. They are deployed for operations requiring special training and/or equipment.

⁹⁴ Council of Europe, Committee Of Ministers, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics (adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies).

⁹⁵ *Taz*, 16 September 2010, <http://www.taz.de/1/berlin/artikel/1/das-neue-bild-von-der-polizei/>.

- ⁹⁶ Quoted in *Der Tagesspiegel*, 17 September 2009, www.tagesspiegel.de/berlin/Polizei-Justiz-Polizeigewalt-Leserdebatte:art126,2901384 (accessed 7 March 2010)
- ⁹⁷ Press release of the Berlin police union (Gewerkschaft der Polizei Berlin), 8 January 2010, www.gdp.de/gdp/gdpber.nsf/id/DE_Gesamtpersonalrat_GPR_lehnt_die_von_Polizeipraesident_Dieter_Gliet_sch_geforderte_Zwangskennzeichn (accessed 7 March 2010).
- ⁹⁸ The European Code of Police Ethics (Recommendation (2001)10, adopted by the Committee of Ministers of the Council of Europe, 19 September 2001, para. 45) makes it clear that the implementation of the regulation requiring individual identification of police officers must be balanced between the public interest and the safety of police personnel on a case by case basis, and does not necessarily imply that his or her name be revealed. Similarly, the CPT (Report to the Moldovan Government, 14 September 2009, p. 14 para. 17) has acknowledged that in exceptional circumstances, measures to conceal the identity of law enforcement officials can be taken, but stressed that the subsequent identification of the individual officers concerned should in all cases be made possible.
- ⁹⁹ Prof. Dr. Klaus Rogall, Zur Frage der Einführung einer individuellen Kennzeichnungspflicht bei uniformierten Polizeibediensteten, Gutachten erstattet im Auftrag des Polizeipräsidenten in Berlin, 2008.
- ¹⁰⁰ Section 839 BGB in conjunction with Article 34 of the Basic Law.
- ¹⁰¹ Public hearing of the superintendent of the Police of the land of Berlin in the parliament of Berlin on 30 August 2005.
- ¹⁰² This information stems from the letter of the PPO to AW's lawyer, informing him that the investigation had been terminated, 14 November 2007.
- ¹⁰³ Information provided by A's lawyer to Amnesty International.
- ¹⁰⁴ Letter of the Minister of Interior to Amnesty International, 28 June 2007.
- ¹⁰⁵ Letter of the PPO to AW's lawyer, 14 November 2007.
- ¹⁰⁶ Letter of the PPO to AW's lawyer, 14 November 2007, p 3.
- ¹⁰⁷ General Comment 20 on Article 7 of the International Covenant on Civil and Political Rights, adopted by the Human Rights Committee at its 44th session in 1992.
- ¹⁰⁸ *Anguelova v. Bulgaria*, 13 June 2002, para. 137, *Nachova and Others v. Bulgaria* [GC], 6 July 2005, para. 110.
- ¹⁰⁹ See *İlhan v. Turkey* [GC], 27 June 2000, para. 63; *Kelly and Others v. United Kingdom*, 4 May 2001, para. 94; *Tashin Acar v. Turkey*, 8 April 2004, para. 221; *Kukayev v. Russia*, 15 November 2007 and also *Bati and Others v. Turkey*,
- ¹¹⁰ See the judgments of the ECtHR in the cases of *Nachova and Others v. Bulgaria* [GC], 6 July 2005, para 110; *Salman v. Turkey*, 27 June 2000, para. 321; *Assenov and Others v. Bulgaria*, 28 October 1998; *McCann v United Kingdom*; *Jordan v United Kingdom*, *Finucane v United Kingdom*.
- ¹¹¹ See *Yasa v. Turkey*, 2 September 1998, paras. 102-104, *Çakıcı v. Turkey* [GC], 8 July 1999, paras. 80, 87 and 106; *Tanrikulu v. Turkey*, [GC], 8 July 1999, para. 109; and *Mahmut Kaya v. Turkey*, 28 March 2000, paras. 106-107.
- ¹¹² *Ramsahai v. the Netherlands* [GC], 15 May 2007. para. 341.

- ¹¹³ *Ramsahai v. the Netherlands*, [GC], 15 May 2007, para. 324; *Kelly and others v. the United Kingdom*, 4 May 2001, para. 96; *Anguelova v. Bulgaria*, 13 June 2002, para. 139.
- ¹¹⁴ *Anguelova v. Bulgaria*, 13 June 2002, para. 139.
- ¹¹⁵ *Nachova and Others*, 26 February 2004, para. 119.
- ¹¹⁶ *McKerr v. The United Kingdom*, 4 May 2001, para. 115.
- ¹¹⁷ Letter of the Bundespolizeidirektion Sankt Augustin, 19 November 2009.
- ¹¹⁸ Amnesty International observed the hearing before the court, and has on file the written judgment.
- ¹¹⁹ Letter of the Public Prosecutor General to JM's lawyer, 29 April 2009.
- ¹²⁰ Letter from the Public Prosecutor General to JM's lawyer, 29 April 2009.
- ¹²¹ Note of the federal police on 28 July 2006 in the files of the PPO.
- ¹²² Letter of the Public Prosecution Office to AD's lawyer, 17 June 2006.
- ¹²³ Note of the Federal police on 11 May 2006, p. 7.
- ¹²⁴ Interview with the superintendent of the police of Hagen on 6 October 2009; article in *Frankfurter Rundschau*, 3 May 2008.
- ¹²⁵ Interview with the superintendent of the police of Hagen on 6 October 2009.
- ¹²⁶ Section 160 para. 1 of the Criminal Procedure Code.
- ¹²⁷ Section 163 of the Criminal Procedure Code.
- ¹²⁸ The CPT Standards (CPT/Inf/E (2002) 1 - Rev. 2009), p. 87.
- ¹²⁹ Baden-Württemberg, Bavaria, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia.
- ¹³⁰ Bavaria, Brandenburg, Hamburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia.
- ¹³¹ Police officers must reveal their identity before the court.
- ¹³² If the victim of an offence files a criminal complaint, he or she has the right to a proceeding to compel public charges to be brought before a court (Section 172 Criminal Procedure Code) if the PPO terminates the investigation.
- ¹³³ *Taz*, Freispruch trotz schwerer Zweifel, 24 April 2008.
- ¹³⁴ According to section 204 CPC the Court can refuse to open the proceedings because of lack of sufficient evidence.
- ¹³⁵ Interview with the superintendent of the police of Dessau on 28 July 2009.
- ¹³⁶ Amnesty International observed most of the sessions of the oral proceedings.
- ¹³⁷ As of 30 April 2010.
- ¹³⁸ German Federal Court of Justice, Press release No 3/2010 (7 January 2009).

- ¹³⁹ Written judgment of the Federal Court of Justice of 7 January 2010, pp. 11ss.
- ¹⁴⁰ Written judgment of the Federal Court of Justice of 7 January 2010, p. 13.
- ¹⁴¹ Letter of the family's lawyer to the PPO, 7 January 2009.
- ¹⁴² Notification by the PPO of the termination of the investigation, 11 March 2009 (on file with Amnesty International).
- ¹⁴³ Letter from the PPO to the family's lawyer, Ratzmann, dated 19 March 2009.
- ¹⁴⁴ E-mail of Jendrik Thiel's mother to Amnesty International.
- ¹⁴⁵ E-mail of KI to Amnesty International.
- ¹⁴⁶ Amnesty International learned about this case from the press and did not carry out further investigations.
- ¹⁴⁷ Quoted in *General-Anzeiger Bonn*, "Richterin entdeckt Knüppelattacke der Polizei", 1 September 2005, p. 6.
- ¹⁴⁸ Facts as established by the Bonn Local Court. Reported in *General-Anzeiger Bonn*, 1 September 2005, p. 6.
- ¹⁴⁹ The case was widely covered in the local media.
- ¹⁵⁰ 29 October 2007.
- ¹⁵¹ The Bonn Local Court reviewed the film and established these facts.
- ¹⁵² Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police, 12/03/2009, CommDH(2009)4.
- ¹⁵³ The CPT Standards: 38. Inquiries into possible disciplinary offences by public officials may be performed by a separate internal investigations department within the structures of the agencies concerned. Nevertheless, the CPT strongly encourages the creation of a fully-fledged independent investigation body. CPT/Inf/E (2002) 1 - Rev. 2009



WHETHER IN A HIGH-PROFILE
CONFLICT OR A FORGOTTEN
CORNER OF THE GLOBE,
AMNESTY INTERNATIONAL
CAMPAIGNS FOR JUSTICE, FREEDOM
AND DIGNITY FOR ALL AND SEEKS TO
GALVANIZE PUBLIC SUPPORT
TO BUILD A BETTER WORLD

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Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

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UNKNOWN ASSAILANT

INSUFFICIENT INVESTIGATION INTO ALLEGED ILL-TREATMENT BY POLICE IN GERMANY

When a person dies or is subjected to ill-treatment while in police custody, the state has an obligation under international human rights law to investigate thoroughly such violations of their human rights. But in Germany these investigations often fail to live up to those standards.

This report analyzes 12 cases of alleged ill-treatment or excessive use of force by police officers in Germany and three cases of deaths in custody, which are illustrative of hundreds of cases. The report argues that, as the police and the public prosecutors often fail to investigate allegations of ill-treatment and excessive use of force in a prompt, independent and thorough manner, the current system may be fostering a climate of impunity.

A genuinely independent police complaints mechanism is needed in Germany to ensure accountability. Victims of violations must have their right to justice ensured.

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