

# F a i l u r e s   a t   F i f t y :

## Impunity for torture and ill-treatment in Europe on the 50<sup>th</sup> anniversary of the European Convention on Human Rights

### Introduction

**T**he year 2000 marks an important anniversary with regard to the protection and promotion of human rights in Europe - the 50<sup>th</sup> anniversary of the adoption of the European Convention on Human Rights and Fundamental Freedoms (ECHR) in November 1950. This landmark event in modern European history - providing the cornerstone for the Council of Europe human rights system, including the European Court of Human Rights - will be duly celebrated this year with a round of grand speeches and lavish banquets. European governments will congratulate one another on the scope and the durability of this enterprise begun half a century ago in Rome, and on the clear articulation of “European values” which this document and its successors have come to represent.

**W**hile acknowledging the extraordinary achievements in human rights protection which have followed on from the adoption of the European Convention on Human Rights, Amnesty International (AI) is also choosing to mark this anniversary with a sobering reminder of how much work remains to be done to ensure that the individual guarantees enshrined in this and subsequent European instruments and standards are genuinely available to **all** men, women and children who inhabit the European space. The succeeding pages of this document

should be read as a challenge to those at the banquet table and the gilded lectern for whom Europe is a comfortable, secure place - a place where words of commemoration come more easily than evidence of sustained political will. The information which follows is a powerful reminder that full implementation of existing European human rights standards is very much an unfinished task.

**O**ne of the core rights set out in the ECHR is enshrined in Article 3 - “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” According to Article 15 (2) of the ECHR, this is a non-derogable right - which means that states cannot place restrictions upon this right even in times of emergency. In its judgment in the case of *Aksoy vs. Turkey* in 1996, the European Court of Human Rights stated that Article 3 “...enshrines one of the fundamental values of democratic society. Even in the most difficult circumstances, such as the fight against organized terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.” A mechanism to enforce the prohibition first set out in Article 3 was subsequently created by the European Convention for the Prevention of Torture, adopted by the Committee of Ministers of the Council of Europe on 26 June 1987. To date, all 41 member states of the

Council of Europe have signed and ratified the European Convention for the Prevention of Torture.

Unfortunately, the September 2000 edition of **Concerns in Europe** (AI Index: EUR 01/03/00) provides ample documentation of the continuing incidence of torture and ill-treatment, as well as impunity for such violations, throughout the Council of Europe region. (**Concerns in Europe** is AI's bulletin containing information on the organization's human rights concerns in Europe - published twice each year). Such evidence suggests that these failings remain as entrenched a feature of the European political landscape as the aspirations contained in the document whose origins we are celebrating this year. Better then to view this year's anniversary as the close of the first phase of a project than as the culmination of decades of persistent application of the highest principles over and above the demands of political expediency and sheer indifference.

Just weeks before the 50<sup>th</sup> anniversary of the adoption of the European Convention on Human Rights, AI launched its third international Campaign Against Torture. Whereas AI's two earlier campaigns had done much to raise global consciousness about the torture and ill-treatment of political prisoners and the need for effective international standards and mechanisms to prevent such crimes, many of the cases highlighted in the campaign launched on 18 October 2000 are representative of the marginalized or especially vulnerable populations who are frequently the victims of torture and ill-treatment in the post-Cold War era. These include members of ethnic, racial and religious minorities; immigrants; refugees and asylum-seekers; children; as well as criminal suspects - many

of whom are often at risk of exclusion from the full benefit of those protection systems which have been so carefully constructed over the past decades.

The September 2000 edition of **Concerns in Europe** contains detailed information about a number of such cases in Council of Europe member states illustrating the above disturbing trends - including allegations of police ill-treatment of a 13-year-old boy of Turkish origin in Austria; allegations of the ill-treatment of a Nigerian asylum-seeker during forcible deportation from Belgium; allegations of the torture and ill-treatment of dozens of ethnic Albanians by police in Macedonia (former Yugoslav Republic of); the alleged ill-treatment - including threats and racial abuse - of a French woman of Zairean origin by police in France; and concerns about the conditions of detention for asylum-seekers in Germany following the suicide of an Algerian woman in the transit area holding facility at Frankfurt am Main airport.

The document also includes information about allegations of the ill-treatment of Afghan asylum-seekers by guards at a detention centre in Hungary; concerns about the toleration by military commanders of the cruel, inhuman or degrading treatment of younger conscripts in the Polish Army; the death in custody of a Roma man in Portugal after alleged police ill-treatment; reports of the rape and torture of several teenage boys and girls held by Russian Federation forces in "filtration camps" in Chechnya; allegations of the assault of a Cuban woman, four months pregnant, by police officers in Spain; allegations of police ill-treatment and racist abuse of an 17-year-old Angolan secondary school student living in Switzerland; and the reported beating by police of a criminal suspect

in Ukraine in order to obtain a confession.

### New guidelines from the European Committee for the Prevention of Torture

The need for exceptional vigilance with regard to specific categories of persons in places of detention has been underlined in a series of recommendations made in recent years by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>1</sup> The mandate of the CPT extends to a wide range of places where persons are deprived of their liberty by a public authority, including police establishments, detention centres for juveniles, military detention facilities, holding centres for aliens, as well as psychiatric hospitals.

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<sup>1</sup> As stated in the Preface to its most recent General Report, “the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was set up under the 1987 Council of Europe Convention of the same name (hereinafter ‘the Convention’). According to Article 1 of the Convention:

‘The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.’

...The CPT implements its essentially preventive function through two kinds of visits - periodic and *ad hoc*. Periodic visits are carried out to all Parties to the Convention on a regular basis. *Ad hoc* visits are organised in these States when they appear to the Committee ‘to be required in the circumstances.’ ”

In its Seventh General Report, published in August 1997, the CPT addressed itself to concerns about foreign nationals detained under aliens legislation, including “...persons refused entry to the country concerned; persons who have entered the country illegally and have subsequently been identified by the authorities; persons whose authorisation to stay in the country has expired; asylum-seekers whose detention is considered necessary by the authorities...”

The CPT’s report comments upon the inadequacy of many point of entry holding facilities, as well as detention facilities in police stations and prisons. It recommends that “...in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel.” The report also offers guidance on safeguards during detention and on the prevention of ill-treatment after expulsion; and addresses the issue of coercion in the context of expulsion procedures.

In its Ninth General Report, published in August 1999, the CPT issued a set of detailed guidelines for the prevention of ill-treatment of juveniles deprived of their liberty. On this occasion, the CPT made plain that “...regardless of the reason for which they may have been deprived of their liberty -

juveniles are inherently more vulnerable than adults. In consequence, particular vigilance is required to ensure that their physical and mental well-being is adequately protected.” Safeguards urged by the CPT in its guidelines include guaranteed access to lawyers and doctors, and the right to notification of a relative or other third party immediately following detention; the prohibition of all forms of physical chastisement; and the accommodation of juvenile offenders in facilities separate from adult detainees.

**M**ost recently, in its Tenth General Report of August 2000, the CPT expressed its wish “...to highlight the importance which it attaches to the prevention of ill-treatment of women deprived of their liberty...” Noting that women numerically represent a “comparatively small minority” of detainees in Europe, the CPT expressed the view that “...this can render it very costly for States to make separate provision for women in custody, with the result that they are often held at a small number of locations (on occasion, far from their homes and those of any dependent children), in premises which were originally designed for (and may be shared by) male detainees.” The CPT underlines the resulting need “...to ensure that women deprived of their liberty are held in a safe and decent custodial environment.” To this end, the guidelines point to mixed gender staffing in places of detention as an important safeguard against ill-treatment; recommend separate accommodation for women deprived of their liberty; and address equality of access to activities, ante natal and post natal care, and other hygiene and health safeguards in places of detention.

**AI** encourages all member states of the Council of Europe to give their immediate attention to the implementation of these safeguards, and to ensure that the CPT’s guidelines are widely disseminated to all relevant actors in society - in the interests of lending real substance to the 50<sup>th</sup> anniversary of the European Convention on Human Rights. National and local non-governmental organizations should also play an active role in raising awareness of these guidelines through the convening of meetings and seminars designed to reach out to members of parliaments and other politicians, the media, and relevant professional organizations and university faculties. As part of a public education campaign, distribution of the guidelines themselves through all appropriate publications should also be encouraged.

**I**n the context of Europe, AI’s Campaign Against Torture will highlight the problem of impunity for torture and ill-treatment in the region - a constant blight on the continent’s human rights record in spite of the exemplary work of bodies such as the CPT and the relevant jurisprudence of the European Court of Human Rights. With regard to torture and ill-treatment in Europe, the standards, the mechanisms, the judgments of the European Court of Human Rights, and the expertise on prevention are all there in abundance. But, as ever, it is the political will to bring to justice state agents reasonably suspected of having been responsible for torture or ill-treatment which remains lacking at the beginning of the twenty-first century.

**A**gain, the September 2000 edition of **Concerns in Europe** includes detailed information about how such impunity creates barriers to justice for victims of

torture and ill-treatment across the continent - from a report on the European Court of Human Rights' decision against Italy in April 2000 for its failure to effectively investigate alleged ill-treatment in Pianosa Island Prison, to the accounts of threats and repression against individuals in Turkey who file complaints against security officers for torture or ill-treatment; from concerns about a pattern of deaths in custody in the United Kingdom where the authorities have failed to carry out independent investigations into the full circumstances of each death, to reports of persecution of complainants and witnesses of ill-treatment by police in Romania. Some of this information is also included in this report.

All 41 member states of the Council of Europe also participate in the Organization for Security and Co-operation in Europe (OSCE) - an inter-governmental body celebrating its 25<sup>th</sup> anniversary this year. In the final report of the Supplementary Human Dimension Meeting on Human Rights and Inhuman Treatment or Punishment, convened by the OSCE in Vienna in March 2000, it was stated that "...inhuman treatment, in pre-trial detention as well as in the penitentiary system, is one of the most persistent and pertinent human rights issues in the OSCE region. It is a serious human rights violation affecting almost all participating States - developed democracies as well as states in transition. It is often an indicator of systemic shortcomings in the legal structure and the rule of law in a participating State." With regard to the reaction of governments to allegations of torture or ill-treatment within their jurisdiction, the OSCE meeting concluded that "the problem of impunity of perpetrators of torture needs to be addressed. Their serious and fair investigation and prosecution needs to be guaranteed."

The information gathered by AI on European countries, as reflected in this and other recent documents, confirms this blunt assessment - with allegations of police ill-treatment or torture documented in at least 20 member states of the Council of Europe in the September 2000 edition of **Concerns in Europe**. It is to be hoped that the stark indictment of the aforementioned OSCE Vienna meeting, and the supporting evidence set out here by AI, will be addressed with some urgency by all those attending the European Ministerial Conference on Human Rights in Rome from 3-4 November 2000. Only with a sincere commitment by governments to tackle this matter will Europe and all its inhabitants truly have something worth celebrating in this anniversary year.

**Failures at Fifty: Impunity for torture and ill-treatment in Europe on the 50<sup>th</sup> anniversary of the European Convention on Human Rights** does not aim to provide a comprehensive survey of the situation in Europe today. Not all member states of the Council of Europe are mentioned in the document. The cases included here have been selected as those particularly representative of the various forms which the phenomenon of impunity in Europe takes today.

As a catalyst for focussing minds in this anniversary year, let us imagine that we are marking not the 50<sup>th</sup> anniversary of the ECHR - but rather its 100<sup>th</sup> anniversary in 2050. On that occasion, let us imagine that AI has published a report on impunity for torture and ill-treatment in Europe identical to this one. As in these pages, one would find a catalogue of necessary and widely-agreed standards; useful

recommendations from diligent investigators and monitoring bodies; and as here, sobering evidence of the regrettable track record of European governments across the continent with regard to implementation of those same standards and recommendations - largely owing to insufficient political will.

**B**ut AI's 2050 report on the failure of governments to end impunity for torture and ill-treatment in Europe would contain one unavoidable difference from its predecessor of this year. For surely, by that time, we would no longer be able to describe this failure merely in terms of an unfortunate gap between theory and practice; between intention and resolution. We would no longer be able to speak confidently about the potential benefits of further guidelines; of the merits of additional safeguards; of yet more innovative educational programs for police and security forces to bridge that stubborn gulf. In another 50 years, in an identical document to this one, intellectual honesty would require us to be far more candid. We would have little choice but to speak of the various human rights standards created in the mid to late twentieth century in terms of a powerful European myth; an inspirational fiction to which we make cursory

reference - but which no longer has any real currency or operative integrity in the wake of steadfast governmental obstruction where accountability and justice are concerned.

**I**s impunity so ingrained in European countries? Are prospects for eliminating this phenomenon really that bleak? Are we inevitably moving toward such a dramatic admission of failure as that imagined above? From AI's perspective, the stakes are definitely that high. For how long can any inter-state system of human rights protection, however sophisticated and creative in its methods, sustain its credibility and legitimacy while its constituent governments refuse to acknowledge that the very root of the problem lies deep within their own ministries and judicial chambers? No amount of carefully-worded resolutions or generous budget allocations in support of earnest symposia can disguise the simple fact that unless governments choose to make torture and ill-treatment a hugely consequential and costly option for their law enforcement officers and security forces, there will be no significant alteration of the situation documented in these pages.

### **Barriers to justice: Impunity in Europe today**

**A**n end to impunity - the failure to bring those responsible for torture and ill-treatment to justice - is one of the primary goals of AI's 2000-2001 global Campaign Against Torture. The stark reality highlighted in AI's campaign is that most victims of torture and ill-treatment around the world are routinely denied justice. Such a chronic lack of accountability creates a

climate where would-be perpetrators can continue to resort to torture and ill-treatment, safe in the knowledge that they will never face arrest, prosecution or punishment.

**I**mpunity sends the message to perpetrators of torture and ill-treatment that they will get away with human rights violations.

Bringing the culprits to justice not only deters them from repeating their crimes, it also makes clear to others that torture and ill-treatment will not be tolerated. However, when the institutions responsible for upholding the law routinely flout it when dealing with their own members, they undermine the whole criminal justice system. Combating impunity means striking at the very heart of this institutional corruption. Impunity must also be overcome because it denies justice to the victims, robbing them a second time of their rights. Impunity itself can be seen as a multiple human rights violation, denying the victims and their relatives the right to have the truth established and acknowledged, the right to see justice done and the right to an effective remedy and to reparation. It prolongs the original hurt by seeking to deny that it ever took place - a further affront to the dignity and humanity of the victim.

Past efforts by the international community have been successful in exposing torture and strengthening legal protections against it. The UN Convention against Torture sets out the obligation of states to investigate the facts, bring to justice and punish those responsible, and provide reparation to the victim - all measures which are vital to the struggle to end impunity. It is increasingly accepted that this obligation is a rule of customary international law, which exists regardless of whether a state has ratified the Convention.

However, it is a rule obeyed only exceptionally. Its existence on paper is of little consolation to the many thousands of people who have been tortured or ill-treated with impunity since the Convention was adopted. The fight against torture today must focus on transforming this

principle into practice.

Impunity manifests itself in many different forms. In order to take effective action against it, the various factors that give rise to it need to be identified. These vary from country to country. Impunity can arise at any stage before, during or after a judicial process. Mechanisms of impunity may even come into play before an act of torture or ill-treatment has been committed. Some typical sources of impunity include the concealment of evidence by law enforcement officers; denial of access to remedies for victims of torture and ill-treatment; ineffective investigations; the complicity of law enforcement officers in protecting colleagues suspected of torture or ill-treatment; the inadequacy of legal frameworks for punishing torture and ill-treatment; and the flouting of judicial rulings by political authorities.

Perhaps the single greatest obstacle to ending impunity for torture and ill-treatment in Europe today is the failure of governments to initiate prompt, independent, impartial and effective investigations into allegations of these particular violations. In keeping with international standards, AI believes that all complaints of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The scope, methods, and findings of such investigations should be made public. During the investigation, those state agents suspected of committing torture or ill-treatment should be suspended from active duty. When there is sufficient admissible evidence, suspects should be prosecuted. Those found guilty must be punished by sanctions commensurate with the seriousness of the offence. Complainants, witnesses and others at risk

during such investigations and prosecutions must be protected from intimidation and reprisals.

This document aims to illustrate – through detailed accounts of individual cases and information about specific contexts in selected member states of the Council of Europe – how these prerequisites of justice for victims of torture and ill-treatment are frequently ignored in many countries in Europe today. Whether through a failure to carry out prompt, independent, impartial, and effective investigations; through unacceptably lengthy investigative or judicial proceedings; through insufficient protection against threats or other intimidation of victims, complainants, and witnesses; or through an inadequate level of sanctions brought against those responsible for torture or ill-treatment – authorities in these and other Council of Europe member states are undermining the integrity of the European human rights project embarked upon fifty years ago.

AI believes that prompt, independent, impartial and effective investigations, with the scope, methods and findings made public, serve to protect the integrity of the criminal justice system and the rule of law. Such investigations can serve to protect the reputations of law enforcement officers who may be the subject of unfounded accusations of torture or ill-treatment, as well as to safeguard the interests of genuine victims of torture or ill-treatment.

Articles 12, 13 and 16 of the United Nations Convention against Torture require that each State Party shall ensure that there is a prompt and impartial investigation, whenever there is a reasonable

ground to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed. Article 12 makes it clear that this duty is not dependent on a formal complaint by a detainee.

Harassment, intimidation or other forms of persecution of victims, complainants and witnesses to alleged torture and ill-treatment by police and other law enforcement officers can prove a decisive obstacle to accountability and justice in Europe. AI calls on all Council of Europe member states to adhere strictly to their obligations under international human rights law regarding the protection of complainants and witnesses. Article 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment makes plain that “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

In European human rights law, Article 13 of the ECHR requires that “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” In its judgment in the case of *Aydin vs. Turkey* in 1997, the European Court of Human Rights has ruled that implicit in the notion of an “effective remedy” is the duty to conduct a prompt and impartial investigation –

along the lines called for explicitly in Article 12 of the UN Torture Convention. Any violation of Article 3 of the ECHR, prohibiting all forms of torture or degrading treatment or punishment, should therefore be promptly and impartially investigated.

The jurisprudence of the European Court of Human Rights concerning Article 13 and its relevance in cases of torture and ill-treatment is substantial. In the aforementioned case of *Aydin vs. Turkey*, for example, the Court found that no thorough and effective investigation had been conducted into the applicant's allegations as required by Article 13. The applicant, 17 years old at the time of the violation, had been detained by the security forces for three days in 1993. During her detention, she was raped and subjected to various forms of ill-treatment. She had been beaten, paraded naked in humiliating circumstances, and sprayed with cold water from high-pressure jets – on one occasion having been pummelled with high-pressure water while being spun around in a tyre.

The Court ruled that the accumulation of acts of physical and mental violence to which she had been subjected had amounted to torture. In its judgment, the Court highlighted the fact that the initial investigation into the allegations showed “overall and serious inadequacy.” The Court noted that the public prosecutor had not bothered to question gendarme officers who were on duty at the time; that medical reports were “deficient”; and that the prosecutor had shown “an unacceptable degree of restraint to the security forces by not questioning the gendarme officers.”

More recently, in the case of *Velikova vs. Bulgaria*, the Court ruled in May 2000 that the state had failed to conduct an effective investigation into an allegation of police brutality – and had therefore failed to provide the applicant with an effective judicial remedy as specified by Article 13 of ECHR. Anya Velikova's husband, Slavcho Tsonchev, had died of internal bleeding after being beaten in police custody in Pleven in September 1994 – 12 hours after he had been arrested on suspicion of stealing a cow. In December 1994, the Pleven military prosecutor had decided not to indict any police officers. The prosecutor's response to appeals against this decision by the family's lawyer was: “No matter how many times attorney Dimitrov appeals to higher instances this decision will not be changed.”

In a positive footnote to this case, it should be added that the Bulgarian Penal Code was altered at the beginning of 2000 to include the introduction of judicial review of refusals by prosecutors to initiate investigations such as the one denied the family of Slavcho Tsonchev. Moreover, criminal investigations by prosecutors may now be terminated only in an open court process in the presence of the prosecutor, the defence counsel of the accused and the alleged victim. This change, long advocated by AI, will prevent military prosecutors from unilaterally terminating criminal investigations of alleged violations by police officers. Before this change, victims of alleged police brutality could only appeal such decisions to higher ranking military prosecutors.

Anya Velikova was awarded 100,000 French Francs in non-pecuniary damages, and 18,000 Bulgarian leva (18,000 Deutschmarks) in pecuniary damages

and costs. Regrettably, coverage of the European Court decision by the Bulgarian media was reportedly sparse. Among the newspapers which did cover the judgment, *Dneven trud* commented: "It is a pity once again Bulgarian taxpayers will pay the compensation payments, costs and lawyers' fees. But it is even more of a pity that prior to that we paid the salaries of the police officers, investigators and prosecutors, who yet again are unlikely to be brought to account. And it is not surprising that the sense of impunity turns some law enforcement personnel into a pack of wild animals."

It is perhaps tempting to view the shortcomings of newer member states of the Council of Europe with regard to strict adherence to international standards concerning prompt, independent, impartial, and effective investigations as a reflection of the fact that they may still be experiencing the characteristic social, economic and political upheavals of a transitional or post-conflict situation. Arguments about scarce resources or contending priorities are likely to be given some credibility as a result. However, AI believes that in many of these cases, the major resource lacking for effective change is usually nothing more costly than the necessary political will to root impunity out of the system through a commitment to the principles discussed in this report. As such, the missing variable in the equation is virtually indistinguishable from that absent in the political or judicial system of states whose pledge to live up to the vision of the ECHR can be counted in decades rather than years.

The information contained in this report emphasizes that it is not just countries with a well-documented history of endemic human rights violations such as Turkey, or those who are still passing through a time of challenging political, social and economic transition such as Bulgaria where the guarantees enshrined in Articles 3 and 13 are not being upheld. As can be seen below, the clear message sent by the ECHR's judgment in *Aydin vs. Turkey* has not always been heard by numerous signatories to the Convention with venerable traditions of rule of law and democratic accountability. Unfortunately, some of the original signatories to the ECHR can hardly be said to be setting examples of good practice for newer signatories to the Convention.

In particular, AI's extensive research on impunity for torture and ill-treatment in Western European countries during the past four decades demonstrates that where human rights are concerned, no society – however economically developed or governed by well-functioning democratic institutions – can afford to be complacent about its adherence to international standards and the principles embodied in them. This call to vigilance and an understanding of human rights culture as a perpetually unfinished enterprise is at the core of AI's work on the elimination of impunity in all Council of Europe countries - including those in Western Europe.

### ***Austria: recent concerns***

In a March 2000 report, AI stated that it continues to receive reports from Austria of alleged ill-treatment of detainees by police officers - in many

instances while being arrested. A large majority of allegations come from non-Caucasian Austrian and foreign nationals. Most report that they have been subjected to repeated kicks, punches, kneeling, beatings with truncheons and spraying with pepper after being restrained. In many cases the allegations of ill-treatment have been supported by medical reports and in some cases the detainees have been taken by the arresting police officers to receive medical attention during their initial period in custody. Police officers are also alleged to have used racist language in some instances. In its report, AI expressed concern that, when formal complaints have been lodged and investigations opened in cases of alleged police ill-treatment, in AI's experience they have been slow, lacking in thoroughness and often inconclusive.

In the light of continued allegations of police ill-treatment, the United Nations Committee against Torture (CAT) recommended after examining Austria's second periodic report in November 1999 that: "clear instructions be given to the police by the competent authorities to avoid any incident of ill-treatment by police agents. Such instructions should emphasize that ill-treatment by law enforcement officials shall not be tolerated and shall be promptly investigated and punished in cases of violation according to law".

In its report following its 1990 visit to Austria, the European Committee for the Prevention of Torture (CPT) made recommendations to and requested information from the Austrian authorities with regard to investigations into allegations of police ill-treatment. The CPT was critical of police disciplinary procedure, in instances where ill-treatment occurred. The CPT considered that the question should be addressed whether the level of sanctions, both as provided for and as applied in practice, were adequate to deter police officers from resorting to excessive use of force and whether an independent person should take part in the disciplinary procedure in order to improve the intrinsic quality of the procedure and enhance public confidence in its fairness.

In its report to the Austrian government, published in October 1996, the CPT made a number of similar comments regarding the investigation of allegations of police ill-treatment. The CPT asked for comments from the Austrian authorities on the apparently lenient attitude of the Ministry of the Interior with regard to disciplining police officers for behaviour which constituted a serious infringement of a person's fundamental rights. In the light of these concerns the CPT asked the Austrian authorities to comment on the desirability of having complaints of police

ill-treatment investigated by persons with appropriate qualifications and skills from outside the police service.

The CPT stressed the importance of senior police officers delivering to their subordinates the clear message that the ill-treatment of persons deprived of their liberty is unacceptable and will be the subject of severe sanctions. The CPT also attached a great deal of importance to human rights education and training among police officers and recommended that a very high priority should continue to be given to enhanced human rights education and to training in modern investigation techniques.

In recent years AI has repeatedly expressed concern that, when formal complaints have been lodged and judicial investigations opened in cases of alleged police ill-treatment, in AI's experience they have been slow, frequently lacking in thoroughness and often inconclusive. The impartiality of a number of criminal investigations into allegations of ill-treatment has also been questioned, with claims that prosecuting authorities frequently view the evidence presented in favour of the suspected police officer as more credible than that supporting the victim. AI knows of very few judicial investigations into allegations of ill-treatment which have resulted in the prosecution of police officers. Furthermore, in

a number of instances known to the organization, where officers were found guilty of ill-treating detainees, the sentences imposed on the guilty police officers were nominal.

AI is also concerned that the trend of a low rate of prosecution of

police officers who are alleged to have ill-treated detainees in proportion with the number of complaints has continued. In replying to a parliamentary question in July 1999 the Minister of the Interior, Karl Schlögl, reportedly admitted that in 1997 there was not a

single prosecution from the 343 registered complaints of ill-treatment by police and gendarmes, whereas in 1998 there was only one prosecution from 356 registered complaints, although a very small number of cases were still pending a decision.

### ***Belgium : the case of Semira Adamu***

Semira Adamu, a 20-year-old Nigerian national, died on 22 September 1998 within hours of an attempt to deport her forcibly from Brussels-National airport: she had resisted five previous attempts to deport her following the rejection of her application for asylum in Belgium. It was alleged that gendarmes who escorted her onto a plane at Brussels-National airport subjected her to verbal abuse and pressed her face against a cushion. When she lost consciousness on board the plane, medical assistance was immediately sought and she was transferred to hospital where she died later on 22 September 1998. Subsequent autopsies and forensic tests established that Semira Adamu died as a result of asphyxiation.

In September 2000 AI expressed concern that some two years after the opening of a judicial investigation into her death, its findings were still unknown

and no one had yet been brought to justice. An inquiry which AI addressed to the Minister of Justice in December 1999, in view of the 15 months which had by then elapsed since Semira Adamu's death seeking news of the progress and outcome of the judicial investigation, remained without response at the time of writing.

Within days of Semira Adamu's death the Minister of the Interior stated that she had been handcuffed and shackled during the deportation operation and confirmed that for a "certain", unspecified length of time a method of restraint known as the "cushion technique" was used by escorting gendarmes. This dangerous restraint method - authorized by the Ministry of the Interior at the time but suspended following Semira Adamu's death and now banned - allowed gendarmes to press a cushion against the mouth, but not the nose, of a recalcitrant deportee

to prevent biting and shouting. The Minister of the Interior resigned following the revelation, within days of the death, that one of the escorting gendarmes had been sanctioned in January 1998 for ill-treating a detained asylum-seeker. He acknowledged that the gendarmerie for which he carried overall responsibility was at fault in allowing the officer in question to continue to serve in a division responsible for carrying out forcible deportations.

A judicial investigation into the circumstances surrounding Semira Adamu's death was promptly opened by the Brussels Public Prosecutor's office in September 1998 and assigned to an investigating magistrate. A video of the deportation operation, made by the gendarmerie, was confiscated by the judicial authorities and three gendarmes were subsequently placed under judicial investigation in connection

with possible manslaughter charges. A disciplinary investigation was also opened in September 1998 but then suspended pending the outcome of the judicial investigation. Reportedly, after a period of extended sick leave, the three officers under investigation were assigned to duties away from the airport.

In September 1999 the Belgian Human Rights League, which had lodged a criminal complaint against persons unknown and constituted itself a civil party to the judicial proceedings opened after her death, requested the relevant investigating magistrate also to investigate two former Interior Ministers in connection with possible manslaughter charges. It held them responsible for the introduction and implementation of the "cushion technique" as an authorized method of restraint during forcible deportations and argued that they thereby also bore responsibility for Semira Adamu's death.

In February 2000 it was reported that the investigating magistrate had concluded his investigation into Semira Adamu's death and that the dossier with the magistrate's findings was then returned to the Public Prosecutor's office for examination and the drawing up of any requests for criminal prosecutions. In October 2000 AI sought confirmation from the Minister of Justice of reports that later that month

the Public Prosecutor's office would be submitting the dossier to the *chambre de conseil* where, following a hearing, a judge would take the decision on prosecution. No response had been received at the time of writing.

In October 1998 the use of the "cushion technique" was suspended pending the outcome of an evaluation of the instructions and techniques relating to forcible deportations which the government entrusted to an independent commission, led by Professor Vermeersch, a moral philosopher. In January 1999 the Vermeersch Commission recommended, among other things, that certain restraint methods be definitively banned during forcible deportations, including "in particular, anything obstructing normal respiration (for example, adhesive tape, cushion on the mouth), and all forced administration of pharmacological products (except by doctors in urgent situations which would naturally mean the termination of the attempted deportation)". AI urged the government to adopt the commission's recommendation in its entirety. Basing its position on the expert opinions of internationally recognized forensic pathologists, AI underlined its own opposition to the use of materials and methods which could block the airways.

New internal

guidelines issued in July 1999 to gendarmes escorting deportees apparently largely reflected the commission's recommendations. However, a request which AI addressed to the Minister of Interior in December 1999, seeking a copy of the guidelines, remains without response at the time of writing. At the same time AI sought information on any steps taken to ascertain the veracity of, and the Minister's comments on, persistent claims made in the course of 1999 of gendarmes making use of heavily padded gloves to cover the mouths of deportees, thus blocking the airway. The gloves apparently form part of the standard equipment issued to gendarmes participating in forcible deportations, to protect their hands from the possibility of bites or other injuries by individuals violently resisting deportation. This inquiry also remains without response.

In a positive development, AI noted and welcomed provisions contained in a decree issued by the Minister for Transport in April 2000 which, amongst other things, explicitly banned the use of methods of restraint involving the full or partial obstruction of the airways of an individual being deported under escort as well as the use of sedative or other drugs to subdue such a person against their wishes. The decree also directs that a doctor or an independent observer should accompany any group of more than four individuals

(excluding any children under 12 accompanying them) being forcibly deported under gendarmerie escort. AI understands that this decree followed discussions between

the Ministry of Transport and the Belgian Cockpit Association whose members had, for a three-month period in 1999, refused to carry passengers being forcibly

deported under gendarme escort because of incidents, including incidents of alleged ill-treatment, and security problems arising on board such flights.

### **Croatia: "Operations Flash and Storm"**

Allegations of torture and ill-treatment have been common among patterns of gross human rights violations in the several armed conflicts which have occurred in Europe during the past decade - not least in the successor states to the former Yugoslavia. Numerous acts of torture were committed by rebel Croatian Serbs and others allied with them between 1991 and 1995, particularly in 1991 during the armed conflict in Croatia. From 1991 until 1995, many of those believed to be responsible for such acts were, while technically within the Republic of Croatia, not within its effective jurisdiction as the territory was held by the *de facto* *Republika Srpska Krajina* (RSK). This area was also known as United Nations Protected Areas (UNPAs), referring to administrative districts established by United Nations peacekeepers deployed there. Two offensives by Croatian security forces in May and August 1995, respectively known as Operations Flash and Storm, brought most of the rebel Croatian Serb territory under government control. The last area, a thin strip along the eastern border with the

Federal Republic of Yugoslavia, was reintegrated under the administration of the United Nations, who finally withdrew in January 1998.

Because of the armed conflict, Croatian Serbs believed to have committed acts of torture have generally been charged with war crimes as defined in Croatian national law, offences exempt from a general amnesty passed in September 1996. Interpretation of acts which qualify as torture has been broad, and pursuit of these prosecutions has been vigorous even when evidence linking a particular individual to a specific crime has been scant - in some cases to the extent of denying the suspects a fair trial.

However, the pursuit of prosecution for such offences when the perpetrators are sympathetic to the Croatian authorities has not been carried out with the same zeal. Although substantial evidence exists that Croatian forces also committed acts of torture in the initial stages of the conflict, the authorities have been at best reluctant to pursue prosecution. AI has observed that the approach of the Croatian authorities to acts of torture is not consistent.

Three factors result in fundamentally different approaches by the authorities: whether the victims are perceived to have been war-time allies of the authorities; whether it is these allies who are in fact suspected of committing torture; or whether the act of torture was outside the context of the recent regional armed conflicts. The discrimination in approach manifests itself in the degree of vigour with which Croatian authorities are willing to investigate and bring to justice those believed to be responsible.

Almost all the Croatian Serbs whom AI has interviewed and who remained in the Krajina following Operation Storm describe the period following the Croatian offensive as one of widespread fear and intimidation. AI has frequently expressed its concerns that some of the acts were committed by members of the police or military. Regardless of the capacity in which offenders operated, however, harassment was commonplace, as was ill-treatment or torture.

For example, one man, whose name is known to AI, was repeatedly visited by soldiers in uniform. On one

occasion in mid-September 1995, the soldiers tied the man to a tree which was then set on fire. A human rights activist who visited him one week later reported that he could not walk because of the burns he had received to his legs. Nevertheless, the following week soldiers again visited the man and, after ransacking his house, kicked him into a stream near his house, breaking two of his ribs. In 1996, during proceedings for an unrelated murder case in a nearby hamlet, demobilized soldiers testified that they had tied a man to a tree and set the grass under it alight, yet prosecutors who were present failed to pursue this confession.

Some of the women who remained behind, including the elderly, were raped by Croatian soldiers, police or uncontrolled civilians. The stigma associated with rape means that many women may have not reported the offence. However, AI is aware of several cases where the victims had the courage to report the offence and allow prosecutions to take place. Although some have led to convictions, the authorities did not diligently pursue the prosecution of two former soldiers accused of the rape of a middle-aged woman in Knin on 6 September 1995. An indictment for that case was filed by the Zadar County Prosecutor in December 1995, but AI is unaware that the accused have as yet been brought to trial.

At its 1996 meeting, the United Nations Committee against Torture (CAT) sought from Croatia information about investigations and prosecutions for acts of torture committed by or tolerated by the authorities following the 1995 offensives by security forces, Operations Flash and Storm. On the occasion of the CAT's review of Croatia's second periodic report to the Committee in November 1998, AI expressed the hope that the Committee would continue to pursue such matters with the Croatian authorities, as other international organizations had stopped doing so - even though the response from the Croatian authorities to these human rights violations had been completely inadequate. The organization also drew the Committee's attention to the blanket statistics, exposed by AI as meaningless, which Croatian authorities have usually employed to respond to inquiries about the violence and intimidation committed after Operations Flash and Storm.

Many of AI's concerns were subsequently raised by the CAT at its November 1998 session. In its Concluding Observations, the CAT stated that it was "...seriously concerned about allegations of ill-treatment and torture, some of which resulted in death and are attributable to law enforcement officials, especially the police...". The CAT also expressed concern "...about the incompetence

revealed in investigation of cases of serious violations of the Convention, including deaths which have not yet been explained. It is also concerned about the lack of a sufficiently detailed report, which was to be prepared on the basis of the recommendations made following the consideration of the initial report..."

Throughout this period, the Croatian authorities persistently refused to cooperate with the Prosecutor for the International Criminal Tribunal for former Yugoslavia (Tribunal) in ongoing investigations into violations of international humanitarian law committed during and after the 1995 Croatian Government offensives, Operations Flash and Storm. According to the Croatian authorities these offensives were internal law enforcement operations, over which the Tribunal lacked jurisdiction.

In July 1999, the Tribunal Prosecutor requested the President of the Tribunal to report Croatia's non-cooperation with the Tribunal to the UN Security Council, stating that she still had not received answers to many outstanding queries, some dating back to 1996. In August 1999, the Tribunal President urged the President of the Security Council to intervene in order to ensure that Croatia provide the Tribunal with evidence and information relating to ongoing investigations into the 1995

offensives and that a publicly indicted suspect, Mladen Naletilif, be surrendered to the Tribunal's custody.

In September 1999, the Justice Minister and the Council for Cooperation with the International Court of Justice and International Criminal Court published a "White Paper", in an apparent attempt to convince the international community of their willingness to support and cooperate with the Tribunal. Nevertheless, the White Paper did not resolve many of the unresolved requests for information nor did it revoke the Croatian Government's unilateral decision to declare the 1995 offensives not within the Tribunal's jurisdiction. In November 1999, the Tribunal President repeated her report to the Security Council regarding Croatia's non-compliance in a letter raising the lack of cooperation with the Tribunal by several former Yugoslav states.

The White Paper also attempted once again to demonstrate that Croatia had itself investigated and prosecuted those thought to be responsible for crimes committed against remaining Serbs after Operations Flash and Storm. However, AI found the sparse new information relayed in the White Paper to be incomplete and misleading. For example, according to the statistics included in the report, seven persons were currently serving prison

sentences for the criminal act of murder, yet only in two cases was it clear that these persons had been convicted for murders committed in relation to the offensives. No further information was given on persons serving sentences for other human rights violations related to the offensives, although the report did note that there had been two convictions for rape.

However, following the election of a new government in January 2000, Croatia's cooperation with the Tribunal improved markedly during the first half of the year. In February 2000, indicted suspect Mladen Naletilif was transferred to the Tribunal's custody, after lengthy extradition proceedings in 1999 and repeated medical investigations into his fitness to travel.

In April 2000 the Croatian Parliament passed a declaration which provided for full cooperation with the Tribunal and reportedly acknowledged the Tribunal's jurisdiction over violations of international humanitarian law committed in the wake of Operations Flash and Storm in 1995.

In August 2000 a former Croatian Army soldier, Milan Levar, was killed by a car bomb in his home town of Gospif. He had previously given evidence to domestic and Tribunal investigators about human rights violations against Serb civilians in the Gospif area at the beginning

of the war. Following Milan Levar's cooperation with the Tribunal he had been subjected to intimidation and harassment by unknown actors. When the Tribunal's prosecutor had officially asked the Croatian Interior Ministry to provide him with adequate protection in 1997, the local Gospif police were apparently never instructed to comply with this request. Following his murder, investigations were immediately launched and a number of suspects were arrested in September 2000.

The investigation into Milan Levar's murder coincided with another series of arrests of Croatian and Bosnian Croat military and paramilitary agents in September 2000, which further demonstrated the new government's resolve to tackle impunity for human rights violations committed during the war. Five Croatian men were subsequently charged with war crimes against Serb civilians committed in Gospif in 1991. In addition three Bosnian Croat men were arrested in connection with war crimes committed in central Bosnia in 1993, when over 100 Bosniac (Bosnian Muslims) civilians were killed in an attack on Ahmifi village. AI applauds the Croatian authorities for these welcome and long-overdue measures and recommends that forthcoming trial proceedings in all these cases be conducted promptly, independently, impartially, and effectively.

### ***France: the judgment of the European Court of Human Rights in the case of Ahmed Selmouni***

In an important judgment, on 28 July 1999, the European Court of Human Rights found France guilty of violating international norms on torture as well as on fair trial within a reasonable time. This important addition to the jurisprudence of the European Court of Human Rights points to a longstanding concern that AI has expressed on many occasions about the failure of European judicial and administrative systems to deal effectively with cases of torture and ill-treatment. Judicial and administrative or disciplinary proceedings may last for years - while police officers allegedly responsible often remain in their posts.

Ahmed Selmouni, of dual Dutch and Moroccan nationality, was arrested in November 1991 by five police officers in Bobigny (Seine-Saint-Denis). While in their custody he was repeatedly punched and kicked, beaten with a truncheon and baseball bat, and forced to do physical exercise. He also claimed he had been sexually abused. Although Ahmed Selmouni had been arrested in 1991, the five officers involved were not examined by a judge until

1997. In March 1999 proceedings against France began before the European Court of Human Rights in Strasbourg. However, in February 1999, just six weeks before the opening of the case in Strasbourg, the officers appeared before a Versailles court, thereby allowing the French government to claim that domestic remedies had not been exhausted and that if the European Court were to deliver a judgment on the torture of Ahmed Selmouni, it would infringe the presumption of innocence. The European Court of Human Rights rejected the French government's arguments and in July 2000 found that France had violated Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment. The Court found that Ahmed Selmouni had clearly "endured repeated and sustained assaults over a number of days of questioning". It stated that the physical and mental violence inflicted "caused 'severe' pain and suffering and was particularly serious and cruel".

In the Versailles

court, the five officers denied the charges of committing violence and sexual assault against Ahmed Selmouni and another man, Abdemajid Madi, and suggested that the two men had injured themselves or had perhaps watched too many films. However, the Versailles court convicted all five officers and sentenced them to between two and four years' imprisonment. All immediately appealed. An unusually swift appeal drastically cut the "exemplary" four-year prison term imposed on one of the officers to 18 months, of which 15 were suspended. The convictions against the four other officers were cut to suspended prison sentences of between 10 and 15 months. The prosecutor attached to the appeal court had herself controversially requested that the officers be "returned their honour" and declared not guilty of the offence of sexual assault and that, if they were to remain convicted of violent acts, they should benefit from an amnesty. The court upheld the convictions against the officers for violent acts but set aside the conviction for sexual assault.

### ***Georgia: the case of the Jehovah's Witnesses***

In October 1999 police in the Georgian capital, Tbilisi, were criticized for allegedly failing to respond

when followers of a defrocked Georgian Orthodox priest, Father Basil Mkalavishvili, assaulted members of a

Jehovah's Witness congregation. The Jehovah's Witnesses, who have been the focus of hostility from radical

supporters of the Georgian Orthodox Church, reported that around 200 people attacked some 120 adherents, including women and children, who had gathered in a rented theatre for a Sunday service on 17 October 1999. The attackers are said to have beaten the worshippers with iron crosses and wooden clubs. A few adherents escaped and reported the attack to local police, who allegedly refused to come to their aid or provide protection. Sixteen worshippers reportedly needed hospital treatment, and the attack prompted widespread condemnation - including from President Eduard Shevardnadze - after extracts from a video of the actions were shown on national television.

Police opened a criminal case after the Jehovah's Witnesses lodged a complaint on 18 October 1999, and laid charges against Father Basil Mkalavishvili. But at the time of writing no proceedings against him have yet come to court. Neither, to my knowledge, has he been charged or prosecuted in connection with attacks on Pentecostal believers earlier in 1999. Speaking to the British-based Keston News Service, Paata Zakareishvili, then chief of staff of the Committee for Human Rights and National Minorities of the Georgian parliament, said: "For the two months before the raid [on the Jehovah's Witnesses] they [supporters of Father Basil Mkalavishvili] had organized

raids on the Pentecostals in Tbilisi. I had appealed via my parliamentary committee to the Ministry of Internal Affairs for them to take action, but they merely replied that they had discovered no evidence of violence despite the fact that I have photographs with such evidence."

Furthermore, on 9 June 2000, the police charged with assault one of the Jehovah's Witness worshippers - Mirian Arabidze - who was himself said to have been a victim of the 17 October 1999 attack (needing hospital treatment for head injuries). Mirian Arabidze's lawyer expressed concern at the move, saying that police were deliberately ignoring video footage which showed the attackers beating worshippers (some 70 of them have reportedly lodged complaints with the police about their treatment), and burning their Bibles and personal possessions.

The case came to court on 16 August 2000, at the Gldani-Nadzaladevi Court in Tbilisi under presiding judge Tamaz Sabiashvili. Mirian Arabidze stood trial along with another Jehovah's Witness named Zaza Koshadze, also said to have been a victim of the 17 October 1999 attack, and two female supporters of Father Mkalavishvili. According to reports by the Jehovah's Witnesses and others, including journalists and human rights monitors, the hearing itself became a focus for more violence by

Father Mkalavishvili's supporters. During a recess on the first day of the hearing, supporters burst into the courtroom and forcibly ejected two Canadian observers, reportedly while security guards watched but did not intervene. The following day, 17 August 2000, Father Mkalavishvili's supporters also physically assaulted two journalists, a lawyer and foreign observers as they left the courtroom after the hearing was adjourned until 18 September 2000. On 28 September 2000, Mirian Arabidze and Zaza Koshadze were convicted of "hooliganism" and sentenced to probationary terms of three years and six months respectively. The case against the two female supporters of Father Mkalavishvili was sent back by the judge for further investigation, even though the women reportedly admitted to their part in the attack.

Father Mkalavishvili and his supporters have since carried out further violent attacks on Jehovah's Witnesses, again with apparent impunity. In at least one case some police officers are said to have joined them in the assaults. On 16 September 2000, for example, a number of buses carrying Jehovah's Witnesses were reportedly stoned and passengers assaulted outside of the town of Marnueli. The Jehovah's Witnesses had planned to hold a convention there that day. However, police at roadblocks set up that

morning were said to have turned back all vehicles carrying Jehovah's Witnesses, while giving free passage and a police escort to busloads of Father Mkalashvili's supporters. In the light of this the convention was cancelled, and delegates on buses were told to return home. At one roadblock, however, some buses returning to Tbilisi were reportedly attacked by a stone throwing crowd. Windows were broken, and one woman passenger was said to have been struck on the head by a rock. According to the Jehovah's Witnesses, Orthodox supporters also stopped another bus, dragged out three male passengers and beat them. The attackers also entered the bus, shouted insults, and robbed passengers. Police at the scene are said to have supported and participated in the beatings, and also to have joined in the looting and destruction of the

site of the cancelled convention. On 8 September 2000 a previous convention of Jehovah's Witnesses, in Zugdidi, was forcibly broken up by masked police.

Earlier that month Jehovah's Witnesses had reported attacks in two other Georgian cities. On 3 September 2000 members of the Senaki congregation were attacked while gathering in a private home by an armed group of men, and the same day two traffic police officers are said to have assaulted a Jehovah's Witness on the street in Kutaisi.

Yura Papava said that the Senaki congregation was meeting peacefully in his home when a man entered the house and demanded to know what they were doing and teaching. Without waiting for an answer, he and five or six other men started smashing the furniture. The group also pulled out a gun, and burned

the presiding minister with a cigarette. Yura Papava said that the congregation contacted the police, "but when they arrived they were of little help and began to abuse the attack victims with obscene language."

Vladimir Gabunia, a Jehovah's Witness living in Kutaisi, described how two traffic police officers approached and then assaulted him on the street. "I was walking down Nikea Street when one of two traffic police asked me to give him some of our literature. When I gave him a magazine, he tore it apart in front of me. His partner punched me in the stomach, and when I doubled over to catch my breath, he took my remaining literature and tore it up. Then he took my two Bibles and put them in his car. They threatened to throw me in the Rioni River and forbade me to walk on the streets."

### **Germany: the case of Binyamin Safak**

In recent years, AI has repeatedly expressed concern to authorities in Germany about the unacceptable length of time it had taken complainants of police ill-treatment to bring police officers to court and obtain justice. The case of Binyamin Safak illustrates the difficulties a complainant in Germany can face in seeking some form of redress for alleged ill-treatment. The Safak case shows that redress

is eventually possible in Germany - but often only after a significant lapse in time. The case first came to the attention of AI in 1996 - and only recently has the complainant obtained a kind of justice.

In December 1999 the Hesse Ministry of Justice informed AI that the criminal department of Frankfurt am Main district court found two police officers guilty on 2 February 1999 of physically injuring the detainee Binyamin

Safak in April 1995. The court gave one police officer a conditional prison sentence of seven months and a fine of 5400 Deutschmarks and fined the other police officer 3600 Deutschmarks.

The ill-treatment took place on 10 April 1995 at approximately 8.45pm after Binyamin Safak, a German national of Turkish origin, and his companion, parked their car in front of a hot-dog stand in the centre of Frankfurt. The

two officers drew up in a police vehicle and told Binyamin Safak that he could not leave his car there. When he stated that he only wanted to stop for a couple of minutes, one of the police officers abused him with racist language. Upset by the use of racist language, Binyamin Safak reportedly told the police officers to be more polite. They in turn requested that he get out of his car, after which one of the police officers violently pushed him to the ground and handcuffed his hands behind his back.

Binyamin Safak was then driven to a police station where the officers immediately took him to a cell without explanation. The detainee maintained that at no stage had it been made clear to him why he had been arrested. Once in the cell the police officers began to assault him. Binyamin Safak informed AI that, over the course of about an hour, the police officers kicked and punched him in the face, chest, head and arms. At one stage one of the police officers took him by his hair, which at the time was very long, and flung him against the wall. During the course of the assault on him Binyamin Safak was unable to offer any resistance because his hands were still handcuffed behind his back. While Binyamin

Safak, was in detention his companion had telephoned Binyamin Safak's parents - who arrived at the police station to ask about their son. They were reportedly told, however, that he was not at the police station and subsequently they threatened to call a lawyer and inform the Turkish Consulate.

Binyamin Safak was released a short time after and was found by his parents in the street outside the police station at approximately 9.45pm. They then drove him straight to the family doctor. A medical certificate from Johann Wolfgang Goethe University Clinic, where he was later treated, showed that Binyamin Safak's injuries included a cut to his lip two centimetres long which required stitching, a bruised and swollen chin, bruises and abrasions to the temple and the forehead, a bruised chest, swelling of the right wrist and right knee, a cracked rib and a depressed fracture of the cheek bone. He was subsequently hospitalized for a week.

The case of Binyamin Safak received considerable publicity following publication of an AI report in February 1996. Because the injuries suffered by Binyamin Safak were so severe, and as they were

allegedly inflicted deliberately and repeatedly with the intention of causing intense suffering, AI referred to the case as one of alleged ill-treatment amounting to torture. In an article which appeared in the *Frankfurter Rundschau* on 7 February 1996, two days after publication of AI's report, a spokesman for the Frankfurt prosecuting authorities admitted that the investigation into his alleged ill-treatment had "not been carried out as speedily as would have been wished", and that the prosecuting authorities had only become fully aware of the importance of the case after it had received letters about it from a Swedish group of AI. These letters, the spokesman said, had given the investigation "a boost".

The prosecuting authorities were also publicly criticized by the Minister of Justice of Hesse for failing to comply with a decree issued in 1991 requiring them to notify the Ministry of all cases where investigations had been launched into allegations of ill-treatment by police officers. The case of Binyamin Safak is one of seven individual cases which the UN Special Rapporteur on torture submitted to the German Government in 1996, and on which he received replies.

### ***Hungary: the case of László Sárközi***

In a set of General Comments regarding **Discrimination against Roma**,

issued at the close of the 57<sup>th</sup> Session of the United Nations Committee on the Elimination

of Racial Discrimination (CERD) in August 2000, the Committee called on all

member states to take measures to ensure the protection of Roma against racial violence. Specifically, the Committee called on states “to ensure protection of security and integrity of Roma, without any discrimination by adopting measures for preventing racially motivated acts of violence against them; to ensure prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts and to ensure that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity”. The Committee also emphasized the need for states to “take measures to prevent use of illegal force by the police against Roma, in particular in connection with arrest and detention”.

AI frequently receives reports of the ill-treatment of Roma by police in a number of Council of Europe member states. On 9 June 1999, László Sárközi, a Roma student, was walking out of Budapest’s People’s Park when a white car stopped next to him and three plainclothes police officers got out and asked to see his identity card. They then demanded to see the contents of his pockets, which he showed them, with the exception of a piece of paper upon which he had reportedly written a poem. On his refusal to allow the policemen to read it, they allegedly knocked him to the ground, and struck and pressed his head and face against the ground several

times. They then handcuffed him. The youngest of the three police officers then allegedly knelt on László Sárközi’s neck and head and beat his head and ears, while the other two kicked him repeatedly in the back and in the stomach, and once in the face. During the alleged assault, the police officers are reported to have verbally abused László Sárközi as a “stinking gypsy” and “dirty queer”.

László Sárközi was taken to Budapest 10<sup>th</sup> District police station to be detained for allegedly refusing to submit to a police identity check. The police officers summoned an ambulance to the police station as László Sárközi was reportedly bleeding from his right ear and wrists. At the police station he was made to wait, standing and facing a corridor wall, still in handcuffs while police officers intermittently verbally abused and mocked him. When the ambulance arrived, a doctor reportedly proposed that the police take László Sárközi to hospital to have a forensic medical certificate issued. László Sárközi declined, reportedly fearing that he would be beaten again on return to the police station if he revealed to doctors how he had received his injuries. The ambulance crew departed, reportedly without treating him.

László Sárközi was taken upstairs to the cells. He declared that he intended to complain about his ill-treatment, to which a police

officer allegedly reacted by kicking László Sárközi in the abdomen. The police officer in charge of the cells reportedly told him: “Poets die young”. The officers allegedly threatened to detain him for 12 hours, and to place him in a cell with a large man arrested for “lewd offences”. One officer reportedly offered to release László Sárközi if he withdrew his intention of filing a complaint. Two hours later a police officer allegedly kicked László Sárközi in the stomach when he reiterated his intention of filing a complaint. He was released at 7.30pm.

The Roma Civil Rights Foundation assisted László Sárközi in filing a complaint to the Budapest Public Prosecutor’s Office on 11 June 1999, and the case received some television coverage. On 23 June 1999 László Sárközi was visited at 7am in his Budapest student hostel and intimidated by one of his alleged assailants, together with two other plainclothes police officers. The officer who had reportedly beaten him is said to have mocked László Sárközi’s television appearance and verbally abused him. Another officer demanded to check László Sárközi’s identity document.

According to information received from the office of the Deputy General Prosecutor of Hungary in September 1999, the Investigation Department of the Budapest Prosecutor’s Office opened an investigation

into the allegations of ill-treatment of László Sárközi. The Deputy General Prosecutor indicated that the possibility of a racist motive in the alleged ill-treatment of László Sárközi would be

considered in the investigation. According to the Deputy General Prosecutor, the investigation would be monitored by the Investigation Supervision Branch of the

Hungarian Procuracy and was being treated as a matter of priority. One year on, AI has received no further information on the progress of this investigation.

### ***Italy: Pianosa Island Prison***

On 6 April 2000 the European Court of Human Rights found Italy guilty of violating Article 3 of the European Convention on Human Rights because it had failed to carry out a “thorough and effective investigation into the credible allegations” made by Benedetto Labita that he had been ill-treated by Pianosa Prison officers. Benedetto Labita alleged that he and other prisoners had been subjected to physical and mental ill-treatment, mainly between July and September 1992. Allegations made by prisoners’ relatives during this period referred to their having been punched, kicked, subjected to arbitrary beatings with batons, repeatedly threatened and insulted, and forced to run continuously during exercise periods.

A press release issued by the Registrar to the European Court, summarizing the court’s judgment, indicated that “...the statements made by the applicant to the authorities had given reasonable cause for suspecting that he had been subjected to improper treatment in the prison, especially as the conditions of detention at Pianosa had been the centre of media attention

during the period concerned and other prisoners had complained of treatment similar to that described by the applicant. The investigations were, however, very slow and not sufficiently effective: it took the authorities fourteen months to obtain photocopies (not prints) of photographs of the warders who had worked at Pianosa. Throughout that period the applicant remained a prisoner there. Moreover, although the applicant had twice said that he would be able to recognise the warders concerned, if he could see them in person, nothing was done to enable him to do so and, just nine days later, the public prosecutor’s office had sought and been granted an order for the case to be filed away on the ground, not that there was no basis to the allegations, but that those responsible had not been identified”.

During August and September 1992 AI received a number of allegations that prisoners held in Pianosa Prison had been subjected to ill-treatment by prison guards and in September 1992 wrote to the Minister of Justice seeking information about the steps being taken to investigate them. The organization cited a

September 1992 report submitted to the Minister of Justice by the magistrate of surveillance responsible for monitoring the treatment of Pianosa inmates which appeared to lend credibility to a number of the allegations. Following an August 1992 visit to the prison the magistrate concluded that criminal acts had possibly taken place there and described several incidents involving “gratuitous and illegal brutality” against detainees. No reply was received from the Minister.

It subsequently emerged that, following the magistrate’s report, the relevant Public Prosecutor’s office opened a judicial inquiry into the various alleged incidents at Pianosa Prison. However, only two prison officers were identified and placed under formal investigation in connection with possible offences of causing bodily harm and abusing their authority. In its eventual submission to the judge of preliminary investigation, the Public Prosecutor’s office apparently requested that neither charge be pursued on the grounds that no formal complaint requesting that a prosecution

be pursued had been filed with regard to the first charge and the second charge was time-barred. The judge accepted the first request but rejected the

second and in December 1996 asked for additional information to be gathered in connection with it. When the European Court of Human

Rights issued its judgment in the case of *Labita v. Italy* in April 2000, it stated that "That inquiry is believed still to be under way".

### ***Macedonia (former Yugoslav Republic of): the Ara...inovo incident***

Macedonia borders Serbia and Kosovo and has a complex ethnic mix, including a significant number of ethnic Albanians - whose social, economic, political and sometimes family life has always been linked to Kosovo and its ethnic Albanian majority. It was thus inevitable that Macedonia would be deeply affected by the crisis which emerged in Kosovo from 1998 onwards.

According to official figures 67 per cent of the population are Macedonians and 23 per cent are ethnic Albanians. However, ethnic Albanian leaders dispute this and claim that the ethnic Albanian population, which is concentrated in the west and north, is larger. The rest of the population is made up of ethnic Turks, Roma, Serbs, Vlachs, Muslim Slavs and other minorities. However, since independence in the early 1990s, the issue of the status and rights of the ethnic Albanian population has been one of the key political issues in the republic. It is in the context of the political confrontations between ethnic Albanians and the government that ethnic Albanian

demonstrators, some of whom became violent, have been subject to human rights violations. For example, in the town of Gostivar in July 1997, police clashed with demonstrators during a political dispute over the use of national flags. Hundreds of demonstrators, including those who had not used or initiated violence, were beaten by police.

AI's concerns about ill-treatment and impunity are, however, not limited to the ethnic Albanian population: Macedonians, Roma and members of other minorities are also frequent victims.

On 11 January 2000, three police officers were murdered at a checkpoint at Ara...inovo, a predominantly ethnic Albanian village near Skopje. The killings were not political in nature; and drug trafficking or other criminal activities seemed to be the most probable motives. Nevertheless, the incident quickly gained political dimensions. In the following days dozens of people from Ara...inovo village and Skopje town were tortured, beaten or otherwise ill-treated by police. Men were held incommunicado for up to 11

days and there were strong indications that Sabri Asani, who died in custody, may have been extrajudicially executed. In a report about the incident, AI stressed that the murder of the police officers was a very serious crime which may have justified a vigorous reaction from the police, but that it was not justification for the human rights violations which had occurred. The organization called for impartial and thorough investigations into all incidents related to the Ara...inovo case and for those found responsible to be brought to justice.

Police searches of the houses in Ara...inovo were characterized by the use of excessive force. On 14 January 2000, when a number of houses in the village were searched, men and boys were beaten in several houses. For example, in one house a man had his jaw broken, reportedly with a police rifle butt. Six men and two 15-year-old boys were made to lie face down outside another house and were kicked and beaten in this position. A 70-year-old man was allowed to sit up, but the others were reportedly kept on the ground for up to three hours. At least eight men were

taken to police stations and were held until late at night and subjected to further beatings and questioning about the murder of the police officers.

Almost all of the men who were arrested in Ara..inovo on 14 January 2000 and in the village or other locations on subsequent days were transported to and moved between police stations with hoods over their heads. In some cases, plastic bags were used as hoods. They were kept incommunicado in the police stations, moved between police stations and subjected to torture and beatings in between questioning. National and international human rights standards were violated as at least eight men were detained for periods of up to 11 days without being brought promptly before a judicial authority. Basic rights such as those of access to a defence lawyer of their choice and the

right to notify their families were denied during this period.

Despite public admissions by the Interior Ministry that the police had arrested some of the detainees by mistake and caused unwarranted damage to houses during searches, the only action taken by the authorities by the end of June 2000 was to provide limited financial compensation to some of the house owners who had suffered damage. The Ombudsman recommended a thorough investigation into the incidents including examination of the need for criminal and disciplinary charges against the police officers involved. The Interior Ministry failed to take action on the Ombudsman's recommendations despite being reminded to do so.

Of particular concern was the case of Sabri Asani, who was arrested in

Mavrovo on the night of 17/18 January 2000. He was dead before reaching the police station in Skopje. The reason for his death - as announced by officials at the time - was a heart attack allegedly linked to intoxication with drugs. An autopsy was carried out, but by the end of September 2000 the report had still not been made available to the victim's family. An experienced pathologist who viewed a video tape of Sabri Asani's body noted that marks around the entry wound suggested that the bullet had been fired at very close range. The body otherwise showed evidence of having been badly beaten. An autopsy was performed on his body. AI called for the pathologist's report to be urgently released, for thorough investigations to be carried out into the circumstances of his death and for those responsible to be brought to justice.

### ***Portugal: the cases of Dr. Vaz Martins and Dr. Duarte Teives Henriques***

In a submission to the United Nations Committee against Torture (CAT) at the time of its consideration of Portugal's third periodic report in May 2000, AI expressed its concern (among other matters) at the effective impunity which law enforcement officers frequently enjoyed in the country as a result of the excessive length of judicial proceedings. Two cases documented in AI's submission

to the CAT illustrate this phenomenon quite boldly.

Dr Vaz Martins, a lawyer of Cape Verdean origin, reportedly became impatient after waiting 45 minutes to see a client at the Public Security Police (PSP) station in Alfragide, in September 1996. An argument about racism ensued with the duty officer and the lawyer was allegedly forced to leave the station at gunpoint. Vaz

Martins had also alleged that, in December 1994, at the same station, an officer had assaulted him. He was reportedly punched in the face and hit with the handle of a firearm, after which he lost most of the sight of his right eye, requiring 39 stitches to his head, and enduring four operations in an attempt to restore his eyesight.

In 1997 the Inspectorate General of

Internal Administration (IGAI) reported that, as regards the allegation made about the incident in 1996, no complaint had been made by Vaz Martins and therefore there was no investigation by the PSP - but that IGAI would open an inquiry into the press reports. A judicial inquiry was meanwhile still under way in connection with a complaint by Vaz Martins, and a counter-complaint by police officers in connection with the 1994 incident. In 1999 IGAI reported that it could find no evidence of misconduct by the police as regards the allegation that Vaz Martins had been forcibly ejected from the police station in 1996. As regards the 1994 incident, disciplinary proceedings against two officers had found no evidence against them "because Mr Vaz Martins had

an aggressive attitude towards the officers, which justified the use of force." Judicial inquiries into the case were still pending and the complaint and counter-complaint had been united in one dossier (rather than the subject of separate court proceedings). Later, in November 1999, IGAI told AI that a new preliminary investigation was being conducted into the case (approximately 60 months after the event occurred).

Another lawyer, Dr Duarte Teives Henriques, lodged a complaint that he had been assaulted by three PSP officers in July 1995. He had reportedly challenged the lawfulness of an officer's order to move his car when he was seized, pushed to the ground, kicked and verbally abused. He suffered a fracture of the

left lower leg and spent the night in the cells before being taken to hospital. The police charged him with refusing to obey orders, failing to identify himself, damaging a vehicle and insulting authority. Internal disciplinary proceedings against the police were dismissed on the basis that the police officers were not responsible for ill-treatment, raising the obvious question as to who was in fact responsible for breaking the lawyer's leg. In January 1999 IGAI informed AI that the judicial inquiry had concluded but that it would remain confidential for a while. In November 1999 IGAI reported that judicial proceedings were in fact still pending because of a request for new preliminary investigations (over 53 months after the events had occurred).

### ***Romania: the cases of Constantin Vrabie and Silviu Rosioru***

In August 2000, AI published a report detailing cases of alleged ill-treatment by the recently established emergency intervention police sub-unit of the Buz|u County Police Inspectorate. Such sub-units were established at county level throughout Romania in the fourth quarter of 1999.

In the late evening of 8 January 2000 plainclothes officers of the Buz|u emergency intervention police sub-unit apprehended Constantin Vrabie and Valentin Barbu while they were dancing in a discotheque,

led them to a van and allegedly beat them. Police officers allegedly continued intermittent beating of the two men at the police station, as they asked them to make statements. Constantin Vrabie was then fined for "insults". The same officers had fined him for a similar alleged offence a month before, when they stopped his car to check his identity. Constantin Vrabie declared his intention to challenge both these fines in court. On 10 January 2000 he obtained a medical certificate describing his injuries: "Massive eye bruise with

central open wound and contusion; massive bruises on the lower lip and in the occipital area; massive headache..."

On the night of 25/26 January 2000 Buz|u businessman Silviu Rosioru and a female companion were drinking at a pub on the Buz|u-Ploiesti road. Silviu Rosioru reportedly made a flippant remark about officers of the Buz|u emergency intervention police sub-unit, who were sitting at a nearby table. On hearing it, they allegedly threw him to the floor, handcuffed him, kicked

him and severely beat him with their batons. Silviu Rosioru and his companion attempted to escape to their waiting taxi-cab outside, yet the police officers dragged him out of the taxi-cab and placed him in their van. Allegedly, the officers continued to beat him in the van on the way to the police station. At the police station the officers fined him for allegedly insulting the pub personnel and refusing to provide identification. Five days later, in a press release, the Buz|u police further alleged that he had insulted and kicked the police officers. Silviu Rosioru claimed that police officers forged his signature on a police report, by which he reportedly confessed to the offences with which he had been charged. Silviu Rosioru was unable to walk unaided when he was released by the police at roughly 5am

on 26 January 2000. He was sent to Buz|u county hospital, and from there to hospitals in Bucharest. The Bucharest emergency hospital released him on 1 February 2000, having issued a diagnosis of: "Signs of aggression. Multiple contusions. Chest and abdominal contusion. Massive bruise on the left thigh and buttock."

At least four complaints of ill-treatment were filed against the emergency intervention police sub-unit of the Buz|u County Police Inspectorate in its first three months of existence. An investigation by the Buz|u newspaper *Opima* revealed that Captain M.T., the commander of the unit, was previously disciplined for acts of violence against waitresses, hospitalizing one in 1996 and breaking the ribs of another in 1998.

AI expressed concern to the authorities about their appointment of a commanding officer with a reported history of brutality and reminded them of their obligation under international human rights treaties to take the necessary steps to guarantee freedom from ill-treatment or torture and to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under [their] jurisdiction". AI urged the authorities to establish the number of complaints of ill-treatment filed against each of the new emergency intervention police sub-units throughout the country. AI urged that focussed and sustained measures of institutional reform are considered *vis a vis* police units against which such complaints have been filed.

### **Russian Federation : "filtration camps" in Chechnya**

In March 2000, AI reported on the existence and location of secret "filtration camps" - where people apprehended by Russian forces in connection with the armed conflict in Chechnya are held without access to their relatives, lawyers or the outside world. During the conflict, Russian forces have reportedly been detaining people in Chechnya at checkpoints and in the territories under their control; either during so-called "cleansing operations" in newly-occupied towns or while

carrying out identity checks on civilian convoys travelling from Chechnya to neighbouring Ingushetia. People have most often been detained for not having proper registration and residence permits, or on suspicion of belonging to armed Chechen groups. Women have also been detained on suspicion of being related to Chechen fighters. Although Russian forces claim to have rescinded the 11 January 2000 order allowing them to hold any Chechen male aged between 10 and 65 on suspicion of being a fighter,

witnesses claim that children as young as 10 continued to be detained after that date.

During the first quarter of 2000, AI collected testimonies from survivors of "filtration camps", which confirm that detainees - men, women and children - are routinely and systematically tortured: they are raped, beaten with hammers and clubs, tortured with electric shocks and tear gas. However, Vladimir Kalamonov, the Russian Presidential Representative on Human Rights in Chechnya, and Yuri

Kalinin, the Deputy Minister of Justice, publically denounced AI's findings, claiming that no such camps existed and that no detainees in Chechnya were tortured. At a press conference in Geneva in April 2000, Vladimir Kalamanov stated that victims and witnesses of torture, including rape, by Russian forces in secret "filtration camps" in Chechnya interviewed by AI were "too stressed" and as a result were not credible.

Also in March 2000, AI had obtained new evidence pointing to an official cover-up of the true scale of atrocities in the "filtration camps" in Chechnya. The organization obtained three separate lists containing the names of 60 of the 300 or so people believed to have been transferred from Chernokozovo "filtration camp" - almost the entire population of the prison - to other detention facilities before February's official visit to the camp by the European Committee for the Prevention of Torture.

The Russian authorities also refused to allow Mary Robinson, UN High Commissioner on Human Rights, to visit a number of secret "filtration camp" made public by AI. The reasons they gave were bad weather and security problems. For AI, this was yet another confirmation of the Russian authorities' lack of will to engage in an open and credible investigation.

In April 2000, the

Parliamentary Assembly of the Council of Europe voted to suspend the Russian delegation's voting rights and called on its Committee of Ministers to immediately invoke a procedure for the suspension of Russia's membership. After a September 2000 visit by a delegation of the Parliamentary Assembly to the Northern Caucasus, the Assembly acknowledged improvements in the human rights situation but did not reinstall Russia's voting rights.

AI urged the UN Commission on Human Rights in April 2000 to call for an international investigation and continued to lobby various governments and intergovernmental organizations for their support. However, the Commission adopted a resolution on Chechnya on 25 April 2000 which failed to call for an international investigation. In its response to the Commission resolution, AI welcomed the request to the relevant UN Special Rapporteurs to visit Chechnya and neighbouring republics - but stressed that such visits were no substitute for a sustained international investigation. However, to date none of these visits have taken place and the Russian authorities appear to be unwilling to comply with the resolution.

The Russian authorities had pre-empted the resolution by announcing the formation of a national public

commission of enquiry on 17 April 2000. AI has expressed concern that there is a worrying lack of credibility and clarity surrounding the mandate of the national commission of enquiry. The commission is made up of high-profile public figures, and does not include medical and forensic experts. The composition and terms of reference of the newly-created national commission seem to indicate that its creation was more a timely public relations exercise by the Russian authorities, rather than the creation of a credible investigatory body. Thus far, it has been unable to take real action to investigate the reports of human rights abuses, despite the good intentions of its members. The commission has no investigative powers or resources.

The office of Vladimir Kalamanov has failed to provide any substantial information on the number of investigations into cases of human rights abuses by security forces against civilians. The given figures vary and no further information about the allegations is available at the time of writing. However, the number of investigations opened is extremely low compared to the number of alleged human rights violations.

AI is not aware of any investigations into cases of torture, ill-treatment, arbitrary detention or indiscriminate use

of force. Continued monitoring by AI has demonstrated that the Russian authorities are failing to investigate thoroughly and impartially even well publicised cases of grave human rights violations, such as the massacre of up to 100 civilians in the Grozny suburb of Noviye Aldi on 5 February 2000; or the "disappearance" of Ruslan Alikhadzhiyev, the speaker of the separatist Chechen parliament, after he was taken from his home by Russian forces in May 2000. Despite the many compelling testimonies of survivors of torture in Chernokozovo and other "filtration camp" collected by AI and other organizations, on 22 September 2000 Vladimir Kalamonov again announced that no detainees had made any complaint of torture to his office. Although he acknowledged that many may have been afraid to speak up and pondered changing the methods used by his office, a month later he backtracked on this and paraded his own office's failure to elicit the testimony of any torture victims in order to dismiss out of hand an extensively documented 100 page report on torture and other abuses in the "filtration camp" issued by Human Rights Watch.

One of the individual cases which AI learned about in March 2000 was that of 16-year-old Chechen boy Adam Abubakarov. He has been held incommunicado by the

Russian authorities, reportedly in several secret "filtration camp", and as such has been at grave risk of torture.

Adam's father, Khamzat Abubakarov, told AI's field researcher that in October 1999 he and his family fled to Ingushetia from their home in the Chechen capital, Grozny, to escape the Russian bombardment. He said that in February 2000, Adam travelled back to Chechnya to help his grandparents dig their vegetable garden and build an air-raid shelter in their basement.

On his way back to Ingushetia, Adam was detained by Russian forces at an army checkpoint in the Chechen town of Urus-Martan. The Russian officers apparently detained him on suspicion of being a Chechen fighter. They had seen blisters on his hands and assumed these to be proof he had been handling weapons or digging trenches. It is believed he was then taken to a "filtration camp", known as the "Internat", from which AI has received reports of torture and ill-treatment.

Adam Abubakarov's mother visited the camp together with other relatives of detainees. Chechen guards at the camp gave her a list of 11 names of detainees for 100 rubles; this list included Adam Abubakarov and another 16-year-old boy, "Akhmed". The prison authorities demanded a ransom for the release of each

detainee, and gave the relatives until 27 March 2000 to deliver the money. When Khava Abubakarova had collected the money, the Chechen guards told her that the 11 prisoners had already been transferred to another detention facility.

Since then, the family has received reports that Adam was transferred to a "filtration camp" in Mozdok, and possibly from there to the prison hospital at the SIZO in Pyatigorsk, in Russia's Stavropol Territory. In late September 2000, Khamzat Abubakarov had new information that his son was now detained in Rostov-on-Don, and he was gathering money to meet a new ransom demand equivalent to \$7,000.

In a meeting in Moscow on 2 June 2000, AI requested the help of the office of Vladimir Kalamonov, the special representative of the Russian President on human rights in Chechnya, in investigating the case. In July 2000 the Russian authorities denied to AI ever having arrested or detained Adam Abubakarov and stated that his case is a fabrication, and he himself a figment of "virtual reality". At this official level Adam Abubakarov has ceased to exist. Meanwhile, at the unofficial level of ransom demands and extortion (which for many Chechens comprises the day to day reality of their contacts with the Russian authorities), Khamzat Abubakarov continues his forlorn efforts to negotiate the

release of his son.

### ***Slovakia: the case of the Roma of ěhra***

The European Commission against Racism and Intolerance (ECRI), established in 1993, is the Council of Europe body tasked with the eradication of racism, xenophobia, antisemitism and intolerance throughout the region. In its second report on Slovakia, published in June 2000, ECRI stated that:

“The problem of police mistreatment of members of minority groups, particularly Roma, is of particular concern to ECRI. Few steps have been taken to combat such practices: there appears to be a lack of acknowledgement that police mistreatment of Roma is a reality. There are reports that police participate in raids and searches on Roma/Gypsy settlements, often without appropriate legal authorisation, and that such searches have also involved police violence. Victims are reportedly very unwilling to come forward for fear of reprisals and from a lack of confidence in the possibilities for redress.”

In September 1999, the Slovak authorities published a paper entitled “Strategy of the Government of the Slovak Republic for the Solution of the Problems of the Roma National Minority and the Set of Measures for Its Implementation”. In the paper

it was acknowledged that Romani communities do not enjoy the full protection of the law: “The practical application of human rights protection and protection of rights of persons belonging to national minorities in real life is not absolute, in particular with respect to the citizens from [the] Romany national minority.”

AI expressed concern to the authorities that a reported police operation conducted in the Romani settlement of ěhra on 2 December 1999 conformed to a pattern of reported instances of police officers carrying out punitive operations targeted against entire Romani communities, in response to suspected crimes committed by individual Roma. Similar reported police operations had been conducted in the Romani settlement in Rudany on 4 July 1998, and in the Romani settlement of Hermanovce on 27 October 1998. The common reported pattern which has emerged from all these incidents is of a dawn raid of massed police officers using dogs; restriction by the police of the freedom of movement of the Romani inhabitants; police officers entering homes without search warrants; police officers causing material damage to the contents and structures of Romani homes, such as doors and windows; police officers uttering racist abuse; and ill-treatment or torture of

members of the Romani community by the police officers.

Up to one hundred riot police equipped with guns and dogs arrived at the apartment blocks in which the Romani community of ěhra settlement lives, between six and seven o’clock in the morning of 2 December 1999. They sealed off all the apartment blocks and ordered hundreds of the inhabitants to vacate their apartments and stand outside the building under police guard. Others were compelled to remain inside their apartments. The Roma Mayor of ěhra was among the hundreds of people whose movements were restricted by the police. During the operation police officers allegedly beat some of the Roma inhabitants with batons. They also reportedly fired rubber bullets at some of the inhabitants of the settlement. One of the victims of police shooting was a 14-year-old boy, who was wounded in the leg. Some of the police officers reportedly shouted abuse which seemed to be racially motivated at the Romani inhabitants, such as “You will die” and “You are dogs”. The police entered several apartments and forced male occupants to lie on the floor. The police then allegedly beat them. Apartments were searched by the police. In the course of these apartment searches the police reportedly

damaged doors, windows, and contents of the apartments.

Several of the Romani inhabitants of Ďehra who were allegedly injured by the police during the raid later turned to local doctors for treatment, and were refused. The 14-year-old boy who was shot by police was immediately taken to a hospital by the police, where he was reportedly kept in enforced isolation, although he was not charged with any offence. The hospital refused to allow his mother access to him over the course of

two days. Reportedly, after two days the boy fled from the hospital, despite his injury. This behaviour by local medical professionals was understood by the Romani community of Ďehra to mean that local medical institutions were instructed in advance by the police not to accept Roma who were injured in the police operation. In addition to preventing their treatment, denial of access to medical assistance to the victims of alleged police ill-treatment also precluded them from

gaining medical certificates to document their injuries.

AI urged the authorities to initiate an independent review of the policing methods used at Ďehra, RudÁany, and Hermanovce. This review should aim to produce recommendations on how to achieve policing of Romani communities based upon their consent, and on the creation of mechanisms for conflict prevention between Romani communities and the police.

### ***Spain: recent concerns***

In a number of European countries where AI has documented cases of impunity for torture and ill-treatment, the occasions when those responsible are brought to justice are comparatively rare and the sentences passed in general are so light as to contribute to an atmosphere of impunity. In Spain, for example, AI has frequently expressed its concern about a number of factors which point to the existence of effective impunity as regards judicial processes connected with human rights violations by law enforcement officers. In commenting on Spain's report submitted to the United Nations Human Rights Committee in 1996, AI argued that "the pattern of nominal sentences for law enforcement officers convicted of torture or ill-treatment, the availability of pardons, lax enforcing of sentences, discrepancies in

standards of forensic medical reporting and the perpetuation of incommunicado detention are all contributory factors in the failure to eradicate torture and ill-treatment".

In some cases the length of the judicial process is so great that, by the time a trial opens, accused officers may not be tried because the period during which prosecution could be brought has lapsed. For example, in January 1998 the trial opened in Bilbao, 14 years after the crime was committed, of five national police officers accused of torturing two suspected members of a Basque armed group, *Iraultza* (Revolution). Three officers were sentenced to a total of five months' detention suspended for two years and eight months for the torture of José Ramón Quintana and José Pedro Otero. However, two other officers could not be tried because more than five years

had elapsed between the crime and the opening of proceedings, and these were not therefore in time. In some cases officers already convicted for a crime of torture, but whose appeals were still pending, have been selected for promotional courses. Where first instance sentences may more appropriately reflect the seriousness of the crime committed, they may be substantially reduced on appeal to non-custodial sentences.

In April 1996 the UN Human Rights Committee expressed concern: "at the numerous reports it has received of ill-treatment and even torture inflicted on persons suspected of acts of terrorism by members of the security forces. It notes with concern, in that regard, that investigations are not always systematically carried out by the public authorities and that

when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released". The Committee recommended that the State party "establish transparent and equitable procedures for conducting independent investigations into complaints of ill-treatment and torture involving the security forces and urged it "to bring to court and prosecute officials who are found to have committed such deeds and to punish them appropriately".

In 1997 the United Nations Committee against Torture (CAT) stated that the long delays in legal proceedings relating to torture, both at the investigation and trial stages, were "absolutely incompatible" with the promptness required by the Convention. The CAT added: "The sentences imposed on public officials accused of acts of torture, which frequently involve token penalties not even entailing a period of imprisonment, seem to indicate a degree of indulgence which deprives the criminal penalty of the deterrent and exemplary effect that it should have and is also an obstacle to the genuine elimination of the practice of torture."

The case of Kepa Urria Guridi provides an illustration of AI's concern in this area. Although not an example of total impunity, it does reflect the continuing "degree of indulgence" on the part of the authorities to which the CAT alludes. In November

1997 the Provincial Court of Vizcaya sentenced three Civil Guards to four years, two months and one day's imprisonment and six years' disqualification from public office for the illegal detention and torture of Kepa Urria in January 1992. Kepa Urria had been a member of the Basque armed group *Euskadi Ta Askatasuna* (ETA).

The Civil Guards had been charged under Article 204 bis, in relation with Article 420, of the former Penal Code. Controversially, however, the court considered that, although Kepa Urria had been tortured, the many injuries he had sustained during his illegal detention, when he had been taken to a deserted area, stripped, dragged along the ground and beaten with a non-identified object, while also being questioned, had required first aid rather than medical treatment and that, therefore, Article 420 of the then Penal Code (relating to injuries requiring medical treatment or surgery as distinct from first aid) was not directly applicable.

Both public prosecutor and defence then appealed to the Supreme Court against the four-year prison sentence and six-year disqualification on the grounds that the punishment was disproportionate with the deed. The public prosecutor argued that, in view of the court judgment, this should be punished as an offence (*falta*) rather than a crime (*delito*). In October 1998 the Supreme

Court reduced the sentences against the officers from four years' imprisonment to a non-custodial one year's imprisonment, while maintaining the six years' disqualification from public service. The court argued that, although torture had indeed occurred, involving a "ferocious attack on the moral integrity and fundamental rights" of the victim, a one-year non-custodial sentence was more appropriate to the "offence" committed because it had not been proved that Kepa Urria had required medical treatment as a direct result of his injuries.

Before delivery of this verdict, one of the convicted officers was selected for a promotional course, involving promotion from sergeant to lieutenant. The Spanish government reportedly stated that, while it acknowledged the gravity of the crime there was nothing it could do to prevent the promotion of the convicted officer while the conviction was not definitively confirmed.

AI has welcomed the introduction of articles in the new Penal Code, introduced on 24 May 1996, which specifically prohibit torture and ill-treatment, increase the scope of the laws punishing such acts and extend penalties for those found guilty of them. However, the organization has stated that the increased scope of the prohibitions and extended penalties are unlikely to be sufficient on their own to end or to significantly reduce

torture or ill-treatment. (It should also be pointed out that in many cases that still come before the Spanish courts the crimes or offences took place at a time when the former penal code was still in force. This allows for continuing application of the former penal code).

In another significant development in the fight against impunity in Spain, in April 1999 the

Supreme Court severely criticized the fact that it was forced to confirm the acquittal of three national police officers charged with raping and beating a Brazilian woman in 1995. Rita Margarete R., a travel agent, was arrested late one night in Bilbao as she was waiting for a taxi - police apparently assumed she was a sex worker. The provincial court accepted that she had

been raped but acquitted the officers because of lack of evidence - no officers had been willing to give evidence against those involved. The Supreme Court was reported as saying that it was incompatible with the democratic rule of law that an "extremely serious and proven case of rape" should remain unpunished because of "archaic corporatist ideas or false camaraderie."

### **Sweden: the case of Osmo Vallo**

In May 2000, the fifth anniversary of the disputed death in police custody of Osmo Vallo, AI wrote to the Swedish Minister of Justice to express concern that five years later, due to the lack of an impartial, independent and thorough investigation into the full circumstances, no one had been held accountable for his treatment and subsequent death (although the two arresting police officers were convicted and fined in 1996 in connection with their failure to control the police dog in this incident).

Osmo Vallo died shortly after his arrest on 30 May 1995. He had been ill-treated by police officers, including being bitten by a police dog, and he was stamped on his back by a police officer as he lay face down on the ground. After he appeared to have collapsed, no attempt was made to assist or resuscitate him. Instead, the police officers transported him in the back seat of the car, still handcuffed

and lying face downwards, to the hospital.

The police investigation into the death of Osmo Vallo was not carried out thoroughly and impartially. The scene of arrest was cleaned before detailed forensic testing was carried out, and some eyewitnesses were reportedly asked by police officers to keep quiet about what they had seen. The first post-mortem examination, a week after the death, was not carried out properly: it failed to take account of detailed eyewitness statements and thus examine the body thoroughly. A thorough examination would have discovered the broken ribs and damage to a neck vertebra. Pathologists carrying out subsequent post-mortem examinations disagreed on whether the police violence and/or positional asphyxia contributed to his death. The National Board of Forensic Medicine (*Rättsmedicinalverket*) failed to review properly the first

post-mortem examination, and the Judicial Council (*Rättsliga Rådet*) of the National Board of Health and Welfare (*Socialstyrelsen*) failed to produce an authoritative and impartial report on the post-mortem examinations and on international concerns on positional asphyxia as a cause of death in police custody in certain circumstances.

The prosecution authorities failed to question the results of the first post-mortem examination and why they did not correspond to eyewitness accounts; and failed to bring prosecutions based on the many eyewitness statements concerning the police officers' treatment of Osmo Vallo, which were consistent with the 39 wounds and bruises found on his body. The fact that the Prosecutor General acknowledged, almost five years after Osmo Vallo's death, that he may have died from being stamped on his back by a police officer is a serious indictment of the whole

investigation process.

In closing the investigation into Osmo Vallo's death on 30 March 2000, the Prosecutor General acknowledged that there had been flaws in the investigation and urged that a further investigation be carried out into how the authorities had handled the different aspects of the case. AI is concerned that the failures of all of the above agencies and authorities to carry out prompt, thorough and impartial investigations could indicate their participation in a cover-up in order to prevent the full truth from being known.

AI is also concerned that Osmo Vallo's death was not an isolated incident. There is a pattern of similar deaths in custody in which the manner of restraint and/or excessive use of force by law enforcement officials may have caused asphyxia, although the organization is not aware of the exact number of such deaths since 1992. International standards on investigation "into cases where complaints by relatives suggest unnatural death" (UN Principles on the effective

prevention and investigation of extra-legal, arbitrary and summary executions) require that: "In cases in which... [there is an] apparent existence of a pattern of abuse... governments shall pursue investigations through an independent commission of inquiry or similar procedure." (Principle 11)

Given the lack of impartiality in many of the investigations to date, AI strongly urged the government to establish an investigation which would be carried out by a totally independent body. This could take the form of a commission of inquiry, and the government could consider including within it, experts from other countries. The remit of the investigation should include the handling of Osmo Vallo's case by the different authorities, as well as a more thorough investigation into the other cases of deaths in custody since 1992.

On 27 June 2000 the Minister of Justice replied to AI. In the letter, the Minister stated that the 21 June 2000 report of the Chancellor of Justice (*Justitiekanslern*) was

critical of actions taken by various authorities involved in the handling of the Osmo Vallo case and indicated flaws within the criminal justice system. The Chancellor of Justice's report called for further consideration of certain questions. The Minister of Justice stated that a commission of inquiry would be set up in the last quarter of 2000 to look into past deaths in custody in order to propose measures to prevent such deaths from happening.

The Chancellor of Justice's report was immediately followed by a report by the Parliamentary Ombudsman (*JO, Justitieombudsmannen*) who stated that the current procedure for dealing with complaints against the police was inadequate and proposed that an independent system be established. The Ombudsman was particularly critical of the local prosecutors' failure to initiate preliminary investigations into some cases of alleged police misconduct even though such investigations would have been justified.

### Switzerland: the case of Clement Nwankwo

The Geneva cantonal authorities have informed AI that they do not intend to take any steps to compensate Clement Nwankwo for treatment which he received inside a Geneva police station in April 1997 and for which the authorities have apologized in writing, nor to inform him of

the reasons why promised disciplinary sanctions against officers involved in his detention were annulled.

Clement Nwankwo, a prominent Nigerian lawyer and human rights activist, travelled to Geneva in April 1997, sponsored by the International

Commission of Jurists, to attend a session of the UN Commission on Human Rights. He said that while there police officers stopped him on the street, without explanation. He stated that he presented his identity papers, as requested, but that police officers then kicked and punched him,

racially abused him, beat him with their fists and batons, and put a baton across his neck - exerting such pressure that he lost consciousness. He claimed that after transfer to a police station he was slapped, forced to strip naked and then left in his underpants, handcuffed painfully to a table leg in an interview room for over an hour - still unaware of the reason why he had been detained.

A medical certificate issued the day after his release, recording injuries to his wrists and left eye, stated that "in all probability" they could have been caused by the ill-treatment he described. He was released after a total of approximately 72 hours' detention spent in the police station and a local prison. During this period, he had been tried under a summary procedure which found him guilty of shoplifting and resisting the police. He entered a formal challenge against the conviction and was committed for full trial in June 1997. On this occasion, he was acquitted of shoplifting, but again convicted of resisting the police. His appeal against the conviction was examined by a Geneva court in September 1997. In December 1997 the court confirmed the conviction and Clement Nwankwo lodged an appeal with the Federal Court. In March 1998 the court rejected this final appeal.

In April 1997 the Geneva cantonal authorities conducted an investigation into the conduct of the police

officers responsible for Clement Nwankwo's arrest and detention. In a letter sent to Clement Nwankwo in May 1997, the Head of the Geneva Canton's Department for Justice, Police and Transport (DJPT) stated that the investigation had dismissed his allegations of physical assault as unfounded but had concluded that "the conditions" in which he had been held in a police interview room were "not in conformity with the rules of ethics of the Geneva police." The letter asked him to accept the apologies of the police for "this inadequate treatment" and stated that sanctions would be taken against the officers concerned. It did not specify the precise nature of the disciplinary offences for which the officers in question were to be sanctioned.

However, it subsequently emerged that the administrative investigation had apparently found the officers culpable only with respect to the delay in returning Clement Nwankwo's clothes and not with respect to the other conditions of his detention in the interview room. In January 1998 the Geneva Prosecutor General issued a decision concluding that no criminal proceedings should be opened as a result of a criminal complaint which Clement Nwankwo had lodged in July 1997 against the police officers involved in his arrest and detention, and in which he had accused them of physical assault (*brutalités*). With regard

to his treatment *inside* the police station, the Prosecutor stated that the administrative investigation had found that he had not been treated correctly insofar as, after being searched, he had been "prevented - for almost an hour - from getting dressed again." The Prosecutor said this treatment might be considered a criminal offence of abuse of authority but that it appeared from the administrative investigation that the delay in restoring his clothes was the result of "negligence rather than of a deliberate intention to do harm." He concluded that the disciplinary sanctions which had been applied to the officers appeared to be sufficient punishment.

Clement Nwankwo was not questioned in the course of the administrative investigation and received no formal notification that, following its completion, sanctions had been issued. It was via media reports that he learned that two official warnings and one reprimand had been issued against three police officers by the Head of the Geneva Police. It was subsequently reported that the three officers concerned had appealed against the disciplinary sanctions. Again, Clement Nwankwo received no formal notification of this development. The officers' appeal was apparently then examined and dismissed by the Geneva Canton's DJPT, after which they submitted their final appeal to a Special Appeals Commission, established under

the Canton of Geneva's Law on the Police.

In October 1998 Clement Nwankwo lodged a petition against Switzerland with the European Commission on Human Rights. The petition referred to his treatment inside the Geneva police station after his detention in April 1997 and the subsequent judicial proceedings which convicted him of resisting the police at the time of arrest. In his petition Clement Nwankwo claimed violation of Articles 3 and 6.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which state, respectively, that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" and that "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". Subsequently, at the end of October 1998, Clement Nwankwo learned via press reports that on a recent but unknown date the Special Appeals Commission had annulled the disciplinary sanctions previously pronounced against three Geneva police officers in connection with his treatment inside the Geneva police station.

In December 1998 AI wrote to the Head of the Geneva Canton's DJPT, expressing dismay over the reports indicating that the sanctions against the officers

had been annulled and the fact that Clement Nwankwo had only learned of this development via the press. The organization urged that all possible steps be taken to ensure that Clement Nwankwo received, as soon as possible, formal confirmation of the reports regarding the Special Appeal Commission's decision, together with a copy of the decision and the reasoning leading to it.

AI also asked to be informed of any steps taken or envisaged by the department as a result of a recommendation made by the UN Special Rapporteur on the independence of judges and lawyers in his annual report 1998 that "in the light of the Government's apologies to Mr Nwankwo..." the government offer him "adequate compensation, thereby avoiding protracted civil litigation and the resultant costs and expense". In April 1998 the Swiss Federal authorities had informed the Rapporteur that the Geneva cantonal authorities were now in a position "to examine the question of compensation as soon as possible."

AI pointed out that, according to the information which it had received, in April 1998 Clement Nwankwo had entered a formal request asking the Canton of Geneva to pay moral and material damages in connection with his treatment. However, the Canton

apparently formally challenged the payment request that same month. The organization also expressed concern that a letter sent to Clement Nwankwo by the Geneva Canton's DJPT in March 1998 indicated that the Canton challenged the actual principle of compensation in the case.

Finally, AI recalled the observation made by the UN Special Rapporteur on torture in his 1998 annual report, following an exchange of correspondence with the federal authorities: "The facts in the Nwankwo case, where there was overwhelming evidence of abuse leading finally to some welcome disciplinary action against the law enforcement officers involved, suggest a judicial disposition precipitately and prematurely to believe the police and to disbelieve the foreign accused/complainant, as well as a reluctance to fully rectify the original wrong".

In January 2000 the Head of the Canton's DJPT informed AI that proceedings relating to a disciplinary investigation are by definition internal and never made available to third parties and thus could not be made available to Clement Nwankwo, the victim of the offences committed. He also confirmed that the Canton of Geneva did not intend to take up any request for compensation. Clement Nwankwo continues to renew annually his request for compensation.

### **Turkey: the case of Zeynep Avci**

In spite of the explicit demands for change inherent in the ECHR's judgment in *Aydin vs. Turkey*, AI continues to have concerns about the failure or reluctance of the Turkish authorities to open investigations into allegations of torture. Equally disturbing is that fact that alleged torturers are often not suspended from their duties during the course of trials against them, and in some cases have even been promoted.

In Turkey, law and ingrained practices combine to spoil the trail leading from the crime to the perpetrator. Detainees frequently cannot identify their torturers because they are almost invariably blindfolded during interrogation. They cannot establish who was on duty at the time of their detention because custody records are kept sloppily or not at all. Where there is medical evidence of torture, it is frequently suppressed. Medical officers who falsify reports have been promoted, and doctors who scrupulously carry out their proper duties have been put on trial or imprisoned. A generalised climate of fear and witness intimidation and prosecutors' reluctance to investigate the work of security force officers are among the factors contributing to impunity.

Additionally, the failure of judges to investigate allegations of torture leads to unfair trials, with confessions extracted under torture being

frequently used in trials as a basis for imprisonment. The Law on the Prosecution of Civil Servants which dated from the Ottoman era was an extraordinary obstacle to bringing perpetrators to justice. It gave a local administrative board established under the provincial governor the power to decide whether or not to prosecute members of the security forces for any offence other than intentional killing. This outdated law was finally replaced by a new one on 2 December 1999. However, under the new law it is still not possible to open an investigation against a civil servant who commits a crime unless his senior grants permission. AI strongly recommends that the decision whether or not to prosecute security officials for torture, "disappearance" or extrajudicial executions should be taken only by the judicial authorities.

Even where complaints of serious human rights violations are pursued by the authorities and prosecution of security officers is actually brought about, only a negligible proportion of them are eventually convicted. According to recent official figures, investigations of 577 security officials accused of torture between 1995 and 1999 resulted in only 10 convictions (1.7 %). In the same period, 2851 investigations into cases of ill-treatment ended with 84 convictions (2.9 %). In cases where a conviction occurs,

security officials often receive the lightest possible sentences.

In this context, AI welcomes the law passed on 26 August 1999 to combat torture. With this law, Article 243 of the Turkish Penal Code was amended, increasing the penalties for torture and ill-treatment. It introduced a sentence for torture or cruel, inhuman or degrading treatment of up to eight years' imprisonment and permanent or temporary disqualification from holding public office, and a sentence of up to five years' imprisonment and temporary disqualification from holding public office for ill-treatment or physical harm. The law also provides sentences of from four to eight years for health personnel who conceal torture by issuing untrue reports. In connection with other reforms this amendment might make a major contribution to ending the impunity of perpetrators and thus ending or reducing the practice of torture.

But the case of Zeynep Avci, a young Kurdish woman who had worked in the textile industry, illustrates the scale of the problem of impunity still experienced by victims of torture and ill-treatment in Turkey today. During an operation against the illegal armed opposition group Kurdistan Workers' Party (PKK), Zeynep Avci was arrested together with a male friend ("R") from a private house in Izmir in November 1996. She was held for approximately one week at the

Anti-Terror branch of Izmir Police Headquarters, and then at the same branch in Istanbul for a total of 22 or 25 days. This exceeded the maximum period for police custody of 15 days then permitted by Turkish Criminal Procedure Code. During this period, she was held in incommunicado detention, with no access to legal counsel. She was finally brought before a prosecutor and a judge on 18 December 1996 and subsequently remanded to Gebze prison. Since then she has been imprisoned pending a trial in which she is charged with separatism under Article 125 of the Turkish Criminal Code - which carries the death sentence.

Two months after being charged, Zeynep Avci reported to a female lawyer what had happened to her while in police custody in Izmir. She told the lawyer that when she was arrested, the police officers "placed me on the back seat of a car and started to abuse me with their hands. They stripped me naked and again started to abuse me. Later they brought me to the police station. They put a wet sponge under my neck and ...repeatedly exposed me to electric shocks over several hours. Meanwhile they let me hear the screams of "R" under torture. Afterwards they put me on another table. I had a cyst operation a while ago. They pressed something cold on the scar. I think it was a pistol. And they brought a truncheon. They told me "Kneel down." And

they slowly inserted the truncheon into my anus. Suddenly, they pushed me and forced me to sit on the truncheon. I started to bleed. Later they again forced me to lie on my back and gave me electric shocks...Then one of them climbed on me and raped me. Afterwards, they exposed me to electroshocks without any interruption."

In May 1997 Zeynep Avci's lawyer submitted a complaint to the Izmir prosecutor accusing the police officers of torture and rape. Two medical reports issued in July 1997 stated that it was medically impossible to assess when sexual intercourse had taken place and the prosecutor decided in August 1997 not to pursue the case. In addition, it was argued that no one had seen the rape taking place. The lawyer unsuccessfully appealed against this decision and applied to the European Court of Human Rights.

In late 1999 the Turkish authorities reportedly informed the European Court of Human Rights that a gynaecologist in Izmir had been charged and tried for performing an abortion on Zeynep Avci some months before her arrest - "knowing that she was a PKK member". There is no evidence that he ever treated Zeynep Avci and it is believed that the intention of the authorities was to discredit her and undermine her allegations of rape. The doctor was acquitted in May 2000.

It was not until March 1999 that Zeynep Avci

received a psychological examination for the first time. However, after just three sessions she told her lawyer in July 1999 that the treatment could not continue as the security officers responsible for transporting her refused to leave the treatment room during the therapy. Treatment was resumed during the third quarter of 2000. In November 1999, the Istanbul Capa Medical Faculty Hospital Psychosocial Trauma Center reported that Zeynep Avci was suffering from a chronic form of post-traumatic stress disorder.

In recent years AI has documented several cases of rape and sexual assault committed by security force members in Turkey. The experiences of Zeynep Avci demonstrate the continuing vulnerability of women in Turkish police stations and prisons and their difficulties in seeking justice. During incommunicado detention in police or gendarmerie custody women and men are routinely stripped naked. Torture methods repeatedly reported to AI include electro-shocks and beating directed at genitals and women's breasts, sexual abuse, including rape or rape threats.

Since mid-1997, a legal aid project in Istanbul aiming at bringing perpetrators to justice has been helping women who were raped by officials and subjected to other forms of sexual torture. By August 2000 123 women, 93 of them Kurds, have sought the support of the project. 47 of

them reported rape; 73 reported other sexual abuse. The suspected perpetrators are

overwhelmingly police officers - while others are gendarmes, soldiers, or village guards.

They are rarely held responsible for their alleged violations

### **Ukraine: the case of conscript 'A'**

The human rights of conscripts in European armies, particularly the right to be protected from torture and ill-treatment, has been an issue of growing concern to many human rights organizations in recent years - including AI. Reflecting the widespread attention given to the matter, the Council of Europe Parliamentary Assembly adopted a resolution on the human rights of conscripts on 22 September 1998 (Resolution 1166). The resolution called on Council of Europe member states to ensure that legislation was in place in their countries "...to protect conscripts from torture, ill-treatment, bullying and other practices that could be considered inhuman or degrading treatment or punishment, according to Article 3 of the European Convention Human Rights." The resolution specifically noted that "cruel treatment of new conscripts by older servicemen in violation of the military code ...poses a serious problem." It called on member states "...to take the necessary measures to change these situations and practices without delay."

AI wrote to the Ukrainian authorities in May 2000, expressing concern about the continuing practice of alleged ill-treatment and torture of young recruits in the

Ukrainian army, sometimes referred to as hazing, which in a number of cases has reportedly resulted in death.

In Ukraine conscription is compulsory and recruits normally are obliged to serve for a period of 18 months. The organization expressed concern that hazing appears to be an institutionalized practice. In addition to soldiers, who had themselves experienced hazing (subjecting new recruits and their physically weaker colleagues to various forms of ill-treatment in the course of their military service), the pervasiveness of the practice suggests that officers tolerate the hazing of new and physically weaker recruits.

According to one source there were around 800 cases of injury in 1997 which resulted from the use of force against recruits, resulting in five deaths and 44 permanently crippling injuries. Between 10 and 12 recruits reportedly died as a direct result of being beaten in 1998 and it is believed that between 20 and 30 men died as an indirect result of their injuries. AI is also informed that each year a significant number of recruits are reportedly driven to suicide as a result of their violent treatment at the hands of other soldiers and officers.

AI also expressed

concern about reports that recruits who have deserted from the army in order to escape hazing by other soldiers may subsequently be sentenced to periods in prison of up to five and seven years respectively for desertion under Articles 240 and 241 of the Ukrainian Criminal Code. The Kharkov Union of Soldiers' Mothers has stated that in the period May 1998 - September 1999 18 recruits, who had deserted from their units, turned to the organization for help. The organization has claimed that 16 of these 18 recruits stated that they deserted because they had been subjected to hazing.

In one instance a recruit, referred to only as "A" by the union, deserted from his unit in Simferopol and returned to his home of Kharkov. He appealed to a local military prosecutor's office, stating he had been a victim of hazing in his unit. Two other recruits had reportedly previously deserted from the same unit as a result of their violent treatment. After being medically examined by doctors, evidence of beatings and cigarette burns was found on his body. Although the military prosecutor's office reportedly stated that the recruit had voluntarily turned to them and included the medical report supporting the recruit's allegations of having

been subjected to violent physical abuse, the military prosecutor's office in Simferopol reportedly refused

to consider the evidence and put pressure on the recruit to withdraw the allegations. In desperation the recruit

reportedly deserted again shortly afterwards and his whereabouts remain unknown.

### **United Kingdom: the case of David Adams**

AI is concerned that police officers who assaulted David Adams have been allowed to act with impunity, and believes that his ill-treatment raises serious questions about the accountability of the police force and about decisions taken by prosecuting authorities.

David Adams was severely ill-treated by police upon his arrest in east Belfast and at Castlereagh Holding Centre in Northern Ireland in February 1994, reportedly suffering brutal beating and kicking as well as verbal abuse. David Adams spent three weeks in hospital receiving treatment for injuries sustained during the incident, including a fractured leg; two fractured ribs; a punctured lung; and multiple cuts and bruises to his face and body.

Following the ill-treatment, David Adams filed a suit in the High Court against the police, seeking compensation for the ill-treatment to which he had been subjected. The High Court awarded David Adams £30,000 compensation in February 1998, the judge concluding that "at least most of the injuries suffered by David Adams were more likely to be the result of direct, deliberate blows", which in his view constituted "illegal behaviour". The judge

furthermore questioned the truth and accuracy of the evidence of police officers at the scene, who denied that David Adams had been assaulted or verbally abused.

Following the conclusion of the High Court case, the Independent Commission for Police Complaints in Northern Ireland (ICPC) carried out an investigation into the case and a file was passed on to the Director of Public Prosecutions (DPP). However, despite the clear-cut nature of the physical evidence in the case and despite the fact that in his judgment in the compensation case, Justice Kerr found that David Adams "was assaulted in Castlereagh much in the manner he has alleged", in August 1999 the Director of Public Prosecutions decided not to bring any criminal charges against the officers involved. AI was extremely concerned about the DPP's decision and the implication that the police officers in question have been allowed to act with impunity. AI believes that given the physical evidence in the case as well as the judgment of Justice Kerr, there is a strong *prima facie* case against some of the Royal Ulster Constabulary (RUC) officers concerned. At the beginning of November 1999 David Adams' lawyer

lodged with the High Court an application for leave for judicial review of the DPP's decision not to bring criminal charges against the officers involved in the alleged ill-treatment. The judicial review proceedings started on 6 March 2000.

On 7 June 2000 the High Court in Belfast dismissed the application by David Adams for judicial review of the DPP's decision not to bring prosecution against the RUC officers alleged to have assaulted him. The High Court also rejected a complaint against the DPP's failure to give reasons for the decision not to prosecute.

David Adams' lawyer is considering taking the case to the European Court of Human Rights in Strasbourg.

The ICPC's decision on whether to take disciplinary action against the RUC officers involved in the alleged beating is still pending.

Due to its concerns about David Adams' case, in July 1998 AI brought the case to the attention of the UN Special Rapporteur on torture. In his report of 12 January 1999, the Special Rapporteur wrote that in September 1998 he had requested information from the UK Government on the scope

and findings of the ICPC's investigation into the David Adams Case. The Special Rapporteur noted that although the government confirmed in November 1998 that an investigation was being carried out, it did not respond to the request of the Special Rapporteur. In addition, AI raised the issue of the ill-treatment of David Adams in its briefing to the Committee against Torture in November 1998.

Finally, AI groups in various countries have written to the UK authorities on several occasions. During the summer of 1998, groups asked UK authorities to ensure that the police officers responsible for David Adams' ill-treatment be brought to justice; that an independent and impartial investigation be launched into the case itself as well as into the issues raised by the High Court judgment, including the underlying systemic faults; that the scope, method and findings of any such investigation be made public; and that any recommendations arising from the investigation be

implemented. Writing during the autumn of 1999 to express their surprise and dismay at the Director of Public Prosecutions' decision not to instigate criminal proceedings against any of the police officers involved in the ill-treatment of David Adams, AI groups repeated the calls for the police officers to be brought to justice and for the government to launch an independent and impartial investigation into the case and related issues. In return, AI groups have received numerous letters from various UK authorities, acknowledging the receipt of their letters but in most cases failing to address the issues raised by AI. The most detailed example is a recent one from the DPP's office, which argues that no criminal proceedings have been instigated against individual police officers involved in the ill-treatment as "it was concluded that the evidence available was insufficient to afford a reasonable prospect of obtaining a conviction of any police officer for a criminal

offence".

AI remains concerned that more than six years after this incident took place, no police officer has been found responsible for inflicting injuries. The organization believes that such failure raises serious questions about the accountability of the police and about decisions taken by prosecuting authorities, and contributes to a belief that there is impunity in the face of human rights violations.

AI believes that in order to improve the protection of human rights in the United Kingdom, the state must ensure that all of its agents abide by international standards for the protection of human rights. In AI's view, by allowing the police officers to act with impunity, the DPP's decision flies in the face of such standards and further damages public confidence in the capacity of the RUC and the criminal justice system in Northern Ireland to deliver justice and to guarantee the human rights of all people.

## Recommendations

Governments are obliged under international law to bring those responsible for torture and ill-treatment to justice and to cooperate with others in this effort. Impunity for perpetrators encourages the continued practice of torture and ill-treatment, denies victims their rights and undermines the rule of law. The Vienna Declaration adopted at the 1993 UN World Conference on Human Rights calls on all governments to "abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law".

- , Those responsible for torture and ill-treatment must be brought to justice. Complaints and reports of torture and ill-treatment must be promptly, impartially, independently and thoroughly investigated. When there is sufficient admissible evidence, the suspect should be prosecuted. Proceedings must conform to international standards for a fair trial. Those found guilty must be punished by sanctions commensurate with the seriousness of the offence. Civil suits and disciplinary measures should be used in addition to prosecution.
- , Victims of torture and ill-treatment have a right to reparation including rehabilitation, compensation, restitution, satisfaction and guarantees that the crime will not be repeated. Governments should ensure that specialized treatment programs are available in countries where there are torture survivors and that victims of torture and ill-treatment have an enforceable right to fair and adequate compensation. The dependants of people who have died under torture or ill-treatment must also be entitled to compensation.
- , Victims of torture and ill-treatment and their families must be given access to the mechanisms of justice in order to obtain redress for the harm which they have suffered. They must be informed of their rights in seeking redress. Special measures should be implemented to ensure that women who have been the victims of torture or ill-treatment, including rape and other sexual abuse, have access to the means of gaining redress and obtaining reparation.
- , States should ensure that their legislation permits courts to exercise universal jurisdiction, so that suspected torturers in their territory can be brought to justice in their own courts, or extradited to a state able and willing to do so, in a fair trial without the possibility of the death penalty. Alleged torturers should be brought to justice wherever they may be, whatever their nationality or position, regardless of where the crime occurred and the nationality of the victim, and no matter how much time has elapsed since the crime was committed.
- , States should ratify the Rome Statute of the International Criminal Court and enact the necessary national legislation to implement it effectively.
- , Council of Europe member states should ensure that national legislation and practice incorporates those provisions of all relevant international human rights standards which could help to eliminate impunity for torture and ill-treatment, including the UN Standard Minimum Rules for the Treatment of Prisoners; UN Basic Principles for the Treatment of Prisoners; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; UN Code of Conduct for Law Enforcement Officials; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; UN Basic Principles on the Role of Lawyers; UN Guidelines on the Role of Prosecutors; UN Basic Principles on the Independence of the

Judiciary; and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

- , Council of Europe member states should ensure distribution of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol, to all judicial and other authorities who have a role to play in investigating cases of alleged torture and ill-treatment.
- , Council of Europe member states should support the adoption by the UN Commission on Human Rights of two new human rights standards, currently under consideration, which would greatly assist international efforts to eliminate impunity for torture and ill-treatment. These are the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law; and the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.
- , Council of Europe member states should ensure that the European Committee for the Prevention of Torture guidelines for the prevention of ill-treatment of foreign nationals detained under aliens legislation and of juveniles and of women deprived of their liberty (as discussed on page 5 and 6 of this report) are implemented in national legislation and practice - and widely disseminated to all relevant actors in society.

