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SWITZERLAND: ALLEGED ILL-TREATMENT BY GENEVA POLICE - THE CASES OF "VISAR" AND CLEMENT NWANKWO

The case of "Visar"

Amnesty International is concerned about the alleged ill-treatment by Geneva police officers in October 1999 of a 14-year-old refugee from the Kosovo province of the Federal Republic of Yugoslavia, identified only as "Visar" in the press. Visar, who has lived in Switzerland with his family for some nine and a half years, was detained in October on suspicion of having participated in a street disturbance. He claimed that he was an innocent bystander but that police ordered a police dog to attack him, even though he said he was making no attempt to flee, subjected him to physical and verbal, including racist, abuse, and interrogated him without his parents being notified or given the opportunity to be present, in violation of the law. As a result of an administrative complaint lodged with the Geneva Chief of Police by Visar's father, two administrative investigations were set in motion.

In interviews granted to the Swiss newspaper, *Le Courrier*¹, Visar and his father said that on the night of 1 October 1999 Visar and a friend were standing at a bus-stop in the Geneva suburb of Le Lignon when they witnessed an argument unfold between a group of older youths and a local resident. The argument -- which was taking place further down the road, some 15 metres away from where the two were standing -- reached such a pitch that the police were called. As soon as they arrived the group of youths and his friend fled the scene but Visar remained at the bus-stop. He claimed that a police officer, apparently believing that he was part of the gang involved in the disturbance (an allegation he categorically refutes), ordered a police dog to attack him even though he was making no attempt to flee the scene: the dog seized and bit his right thigh, only withdrawing after repeated commands from its handler. He was thrown to the ground by police officers and then, with one officer on top of him, handcuffed. He was placed in a police car and taken to Blandonnet police station.

Visar said that en route to the police station the police officers made derogatory, including racist, remarks about him and his family. On arrival at the police station he was made to strip and his belongings were searched. He was then left to wait in what he described as a very cold room dressed only in a T-shirt and trousers until an officer came to take him for questioning. He maintained that the police officer struck him more than once over the back of the neck with a bottle of water. He further maintained that police officers tried to coerce him into admitting participation in the street disturbance by stamping on his feet and by squeezing him so tightly around the neck that he had difficulty in breathing and feared he was going to die. After the interrogation the police officers called in a doctor to examine the dog bite.

Visar's father was eventually contacted by the police and came to the police station to collect him. The pair were made to sign three forms before being allowed to leave. The father maintained that they did not know what the forms were for, and that they were not given copies. Visar does not appear to have been charged with any offence.

¹Edition of 8 November 1999.

On 13 October 1999 Visar's father lodged an administrative complaint against three police officers (attached to Blandonnet police station) with the Geneva Chief of Police. The complaint was accompanied by a medical certificate, issued by Visar's family doctor on 3 October 1999, and which recorded "several wounds" («*des nombreuses plaies*») to the inner part of his right thigh and two red marks, one on the back of his neck and one on the right side of his chest, and which indicated that he appeared psychologically traumatized by the incidents.

Two investigations were subsequently opened: an internal disciplinary investigation and an investigation under Article 38 of the Geneva Law on the Police. Under the provisions of this article, the Chief of Police submits, for review, copies of complaints of ill-treatment against the police together with relevant existing police reports, to an individual appointed by the Geneva Government but from outside the administration itself. The post is currently held by a former member of the Geneva Government who, in accordance with Article 38, must inform the Head of the Cantonal Department of Justice, Police and Transport (DJPT) if he concludes that there has been police ill-treatment in the case in question. The Head of the DJPT then decides on further action.

Amnesty International is asking the cantonal authorities for cooperation in informing the organization of the progress and eventual outcome of these investigations, and of any further administrative or criminal proceedings arising from them and urging them to compensate Visar, if the investigations establish that there was ill-treatment and excessive use of force. The organization is also urging that in their investigations the authorities pay special attention to the provisions of Articles 2 and 37 of the UN Convention on the Rights of the Child (see below), to which Switzerland is a party and with which it is, therefore, bound to comply.

UN Convention on the Rights of the Child

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 37

States Parties shall ensure that:

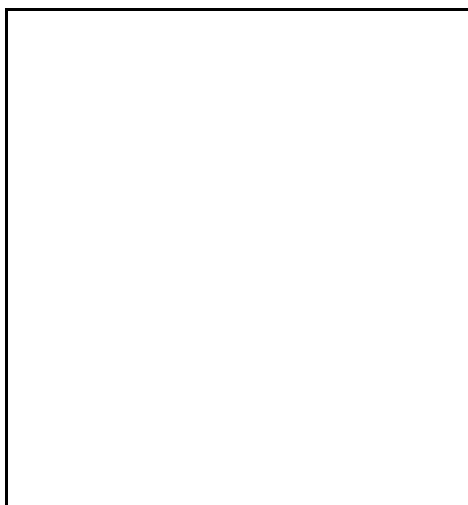
(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

The case of Clement Nwankwo



Clement Nwankwo receiving the Martin Ennals Human Rights Award (1996)

Amnesty International is still awaiting a substantive response to a letter it wrote to the Geneva cantonal authorities in December 1998, and is now urging a response. In its letter the organization sought information regarding the administrative and disciplinary proceedings undertaken in connection with Clement Nwankwo's treatment in a Geneva police station in April 1997. In particular, Amnesty International asked for information about any steps being taken to compensate Clement Nwankwo for treatment which he received inside the police station and for which the authorities have apologised in writing.

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 alleged. He was released after a total of about 72 hours' detention spent in the police station and a local prison, and after being 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 when 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 1997². 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" (*«des 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" (*«ne sont pas conformes aux règles de déontologie de la police genevoise»*). The letter asked him to accept the apologies of the police for "this inadequate treatment" (*«ce traitement inadéquat»*) 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

²Amnesty International observers attended the June and September 1997 court hearings.

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 accused them of physical assault on the street. 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” (*«pendant plus d’une heure, vous avez été empêché de vous rhabiller»*). 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” (*«plus d’une négligence que d’une intention délibérée de nuire»*). 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 (*avertissements*) and one reprimand (*blâme*) 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 Amnesty International 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.

Amnesty International 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” (*«examiner dans les meilleurs délais la question d’une indemnisation»*).

Finally, Amnesty International 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”.

The Head of the Canton’s DJPT acknowledged Amnesty International’s letter in December 1998, stating that he had requested the competent offices to examine it and promising a subsequent reply. Amnesty International has yet to receive this reply.