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@The alleged ill-treatment of foreigners: a summary of concerns

During the past 12 months Amnesty International has received a number of allegations that foreigners, some of them asylum-seekers, have been subjected to cruel, inhuman or degrading treatment or punishment by police or prison officers. In some of the cases documented below, the detainees allege that they were ill-treated while in administrative detention awaiting deportation.

The alleged ill-treatment of detainees in pre-expulsion detention

Pre-expulsion detention or *Schubhaft* is a form of administrative detention provided for under Article 41 (1) of the 1992 Federal Law on the Entry and Residence of Aliens (*Bundesgesetz über die Einreise und den Aufenthalt von Fremden*), also referred to as the Law on Aliens (*Fremdengesetz*). Many of the people held in pre-expulsion detention (these can number several hundred at any one time) are in fact asylum-seekers who have been arrested on the grounds of entering Austria illegally or without the proper documentation. Article 45 (3) of the Law on Aliens states that when an alien is arrested or detained under the law care must be taken to "respect his human dignity" and to "treat his person with the utmost consideration"¹. According to Article 48 (4) of the Law on Aliens, a detainee can be held in *Schubhaft* for up to six months.

The case of Amor Jelliti

On 20 August 1992 Amor Jelliti, a 38-year-old Tunisian, was arrested at the Swiss-Austrian border. He was taken to Wels Police Detention Centre (*Polizeiliches Gefangenenhaus Wels*) where he made a written statement in which he asked for asylum. In a letter to Amnesty International in May 1993, Amor Jelliti says that between 21 August and 4 October 1992 he repeatedly asked to talk to the chief police officer in Wels Police Detention Centre about his asylum application, only to be told that he would be informed when and to whom he could speak. On the morning of 4 October 1992 he was told that he was to leave for Vienna. Fearing that

¹ §45 (3): "*Bei der Festnahme und Anhaltung ist auf die Achtung der Menschenwürde des Fremden und auf die möglichste Schonung seiner Person Bedacht zu nehmen*". The ill-treatment of detainees is prohibited by Austrian constitutional, criminal and administrative law and by various international standards to which Austria is a party, including Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the International Covenant on Civil and Political Rights.

he was to be returned to Tunisia where he had previously been imprisoned and tortured as a result of his support for the Islamic Tendency Movement (*Mouvement de la tendance islamique* - MTI)² and where he would be at risk of arrest and further torture, Amor Jelliti fell to the floor in a state of terror.³ Police officers, however, insisted that he was to go with them, despite seeing the obvious state he was in - attributable in part to his poor health. (Amor Jelliti states that he suffers from heart trouble and from diabetes and that he had made this known to the authorities on the first day of his detention.) According to the asylum-seeker the officers then tied a belt around his body, handcuffed him and dragged him along the ground. They collected all of his things together and prepared to put him into a car. However, because of the state he was in, the officers changed their minds and contacted their superior. Amor Jelliti writes: "They put me in the corridor and from time to time came along to give me a kick on the bottom. They pressed the soles of their shoes on my stomach and then dragged me along the ground and put me into a cell...I was in the cell, without water or a blanket, until [the next day]."⁴ Amor Jelliti was released from detention on 20 October 1992 following rejection of his asylum application. In March 1993 his lawyer provided the Federal Ministry of the Interior with information to support his appeal against the rejection of his asylum application. This information included details of his alleged ill-treatment while in Wels Police Detention Centre. In May 1994 Amor Jelliti was still waiting to hear whether his appeal had been successful.

Amnesty International asked the Austrian authorities in July 1993 whether a judicial investigation had been ordered into Amor Jelliti's allegations and if so, when it was expected to be completed. It raised the matter again with the authorities six months later, having received no reply to its first letter. In February 1994 Amnesty International was informed by the Deputy Director of the Division of Human Rights of the Federal Ministry of Foreign Affairs, that Amor Jelliti had "tried to hurt himself by pushing his head against a radiator in order to inhibit his deportation. It was for that reason that a police officer grasped his arms, when Jelliti fell into a sort of swoon. The competent health officer later spoke of an 'abnormal reaction'. The expulsion was stopped immediately. None of the police officers involved behaved uncorrectly [sic] or even unlawfully." In March 1994 Amnesty International asked the authorities whether the allegations made by Amor Jelliti had been investigated by a judge, in accordance with the

² The MTI was replaced by the *al-Nahda* (Renaissance) movement in 1989.

³ Amor Jelliti's wife was repeatedly detained for questioning by the Tunisian authorities after he left the country. She was arrested in October 1992 after trying to send information about her husband to the Office of the United Nations High Commissioner for Refugees (UNHCR) in Vienna, and was tortured during incommunicado detention. She was later sentenced to one year's imprisonment for participating in unauthorized meetings and for collecting money for the families of detainees.

⁴ "Ils m'ont mis au couloir et de temps en temps ils venaient pour me donner des coups de pieds sur les fesses et appuyaient par la semelle de souliers sur mon ventre puis ils m'ont mené tiré par terre pour me mettre dans [une cellule]...[J]e restais dans [cette cellule] sans eau et sans couverture jusqu'au lundi 05.10.92".

decree issued by the Justice Ministry on 15 September 1989, and whether the asylum-seeker had been questioned personally by the investigating judge about his allegations.

The case of Dickson Nosa Oviawe

Thirty-year-old Nigerian Dickson Nosa Oviawe was arrested on 24 March 1993 and placed in pre-expulsion detention in East Vienna Police Detention Centre - (*Wiener Polizeigefangenenhaus-Ost*). On 28 April 1993 at approximately 9am he was woken up by a police officer who shouted "Visit from Amnesty!" ("*Besuch amnesty!*"). He jumped out of bed quickly and started to dress himself. However, he had managed only to pull his shirt on and to put his feet in his shoes before being pushed out of his room by the officer who shouted "*Gemma, gemma*" ("Come on, come on") and called him "*Neger*"⁵. Not only did the officer refuse to allow Dickson Nosa Oviawe to finish dressing, he also seemed to derive some pleasure from sending him into the visiting room, his genitals clearly visible to his visitor, an Amnesty International refugee advisor. Both visitor and detainee were embarrassed and outraged at having to conduct their interview (regarding Dickson Nosa Oviawe's possible deportation) under such conditions. The Amnesty International refugee advisor, complained to one officer who agreed that what had happened was an affront to human dignity. Dickson Nosa Oviawe was later released from pre-expulsion detention after a 31-day hunger strike in protest at his detention. Although at first extremely anxious about the possible consequences of complaining about the police officer's degrading treatment of him, Dickson Nosa Oviawe eventually did make a formal complaint through his lawyer.

On 22 September 1993 the Federal Ministry of the Interior informed Dickson Nosa Oviawe's lawyer that it regretted the incident in the visiting room, but that despite extensive research it had not been able to verify the identity of the police officer responsible for the detainee's inadequate state of dress. The Ministry also noted that Dickson Nosa Oviawe "had, however, been wearing a long shirt, which at least covered his genitals when he walked and sat

⁵ The word *Neger* - meaning "negro" - is often used as a term of racist abuse (cf. the English "nigger"). Through his lawyer Nosa Oviawe complained to the Federal Ministry of the Interior about the use of this word. In its response to his complaint the Ministry wrote that the word *Neger* was, according to the dictionary, used to designate a person "of negroid origin" ("*negroider Herkunft*"). It was not racist or discriminatory and therefore there was no intention of prohibiting its use by officials. Dickson Nosa Oviawe's lawyer wrote again to the Ministry, asking it to re-examine its decision and enclosing a copy of an expert linguistic analysis of the use of the term *Neger*. In January 1994 Dickson Nosa Oviawe's lawyer was informed by the Ministry that it had instructed the federal police authorities "to duly avoid...using the word" ("*das Wort...tunlichst zu vermeiden*").

down"⁶. Furthermore, "when officers check the detainee's clothing they normally look only at his outer garments and not at his underwear"⁷.

The case of Orlando Frederik Mensah

Orlando Frederik Mensah, a 44-year-old black man of Dutch nationality, was placed in pre-expulsion detention in Innsbruck Police Detention Centre (*Polizeigefangenenhaus Innsbruck*) on 26 April 1993. On 24 May 1993 and 25 June 1993 he was questioned by a judge from Innsbruck Provincial Court (*Landesgericht Innsbruck*) following a complaint he had made about an incident that occurred on 19 May 1993. In his statements to the investigating judge, Orlando Frederik Mensah alleged that on the day in question a police officer came into the cell he was sharing with two other detainees and demanded to know which detainee had been talking to another detainee in a neighbouring cell. After admitting that he had, Orlando Frederik Mensah was told by the officer that he would be placed in solitary confinement in the cellar. He began to pack his things together but was told he was to go there naked. He refused because he did not want to walk naked from his cell on the second floor of the detention centre to the cellar. There followed an argument with the officer, during the course of which the detainee was grabbed by the neck and thrown against a locker in the cell; this was witnessed by one of his cellmates. According to Orlando Frederik Mensah the officer slapped him in the face as he was leaving the cell, threw him to the floor and kicked him in the stomach and genitals. He was then taken down to the cellar where he was told to undress before being placed in an isolation cell. Because the cell was cold he requested to see a doctor. His request was ignored, although approximately two hours later he was brought a blanket. After a further two hours he was returned to his cell where his second cellmate reported noticing that his left eye was red and that he was clearly experiencing pain on the side of his face. The officer alleged to have ill-treated Orlando Frederik Mensah denied the allegations and stated that the detainee had left his cell of his own accord. According to the officer no force had been necessary and the detainee was wearing his clothes when he entered the isolation cell.

Five days after the incident Orlando Frederik Mensah was examined by a doctor who found an area of swelling to his head and signs of bruising to his left eyeball. On 30 July 1993 the accused officer was charged under Article 312 of the Austrian Penal Code which makes it an offence to "torment or neglect a detainee"⁸.

⁶ *"Herr Oviawe trug jedoch ein langes Hemd, welches zumindest beim Gehen und Stehen seinen Geschlechtsteil verdeckt hat"*.

⁷ *"Die Bekleidungsüberprüfung durch die Aufsichtsbeamten erstreckt sich nämlich normalerweise nur auf die Ober- nicht aber auf die Unterbekleidung eines Häftlings"*.

⁸ §312 Strafgesetzbuch: *Quälen oder Vernachlässigen eines Gefangenen*

By the time the trial proceedings were opened in January 1994, Orlando Frederik Mensah and his two cellmates had been released from pre-expulsion detention and were untraceable. Nevertheless, on the basis of the evidence available to the court, it was established that the accused officer had been responsible for causing the injuries which the detainee had suffered, and that the same officer had locked him naked in the isolation cell - a sanction which he did not have the authority to impose. The officer was fined 72,000 Austrian Schillings (approximately £4,000), half of which was suspended for three years.

Amnesty International's concerns

Amnesty International is concerned about the allegations it has received that pre-expulsion detainees have been subjected to cruel, inhuman or degrading treatment or punishment. The organization is also concerned that the small number of cases it has documented may not accurately reflect the true extent of the problem, and that the actual number of instances of ill-treatment could, in fact, be much larger. Two factors in particular lead Amnesty International to this conclusion.

Firstly, asylum-seekers, lawyers and refugee organizations have repeatedly told Amnesty International that asylum-seekers are particularly reluctant to make any formal complaint if they are ill-treated, for fear that such action could prejudice their asylum claim. A recent case clearly illustrates this point: in October 1993 a lawyer who represented Chinese student Fang Li in his asylum claim informed Amnesty International that his client had described to him how he had been dragged out of bed by the hair one day by a police officer. The incident occurred while Fang Li was being held in pre-expulsion detention in the summer of 1992 at Linz Police Detention Centre (*Polizeigefangenenhaus Linz*). Fang Li had then been left in a room for several hours dressed only in his underpants. The asylum-seeker made no complaint about the behaviour of the officer for fear this might affect his asylum claim. Fang Li later told his lawyer that he was now happy for this information to be passed on to Amnesty International, as he had since been granted refugee status by the Austrian authorities.

Secondly, detainees face enormous practical difficulties in contacting relatives, legal representatives or representatives of human rights organizations while they are in pre-expulsion detention. This could mean that allegations of ill-treatment go unreported. Although Article 45 (2) Point 1 of the Law on Aliens grants a pre-expulsion detainee the right to inform a relative (or other person of his choosing) and a lawyer of his arrest, and Articles 19 and 20 of the Police Detention Centre Regulations⁹ stipulate that detainees are to be freely allowed to make telephone calls, to send and receive mail and to receive visits, in practice their access to the outside world is severely restricted. For example, detainees are not supplied with the names of

⁹ *Polizeigefangenenhaus-Hausordnung* of 28 September 1988

suitable legal or refugee advisers, and if they are lucky enough to know the name of one, they are effectively prevented from contacting them if they do not have a coin with which to make a telephone call or a stamp to put on a letter, or else they may simply not be given permission to make the telephone call or their letter may not be posted. The right of pre-expulsion detainees to receive visits is also often restricted in practice. Refugee organizations, for example, do not have automatic and free access to all asylum-seekers in pre-expulsion detention; they can only visit individual detainees whose cases they already know about. Often, too, relatives or legal representatives are simply refused permission to visit a detainee.

Amnesty International has repeatedly criticized the practice in Austria of placing asylum-seekers in detention on the grounds that this restricts their opportunities to lodge an application for asylum¹⁰. The organization has also stated¹¹ that it believes that in failing to facilitate contact between detainees and the outside world, Austria is in contravention of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment¹².

The alleged ill-treatment of detainees in police custody

The case of Osaren and Eunice Atewe

Osaren Atewe, a chemical engineer, and his wife Eunice are from Nigeria and have been living in Vienna for over 10 years. On 11 December 1993, at approximately 10am, Osaren and Eunice Atewe heard a loud banging on their apartment door. Osaren Atewe opened the door and was confronted by about a dozen police officers wearing masks and carrying guns. One of them

¹⁰ See *Europe: Human rights and the need for a fair asylum policy*, AI Index: EUR 01/03/91.

¹¹ See, for example, *Keine Mauern gegen Flüchtlinge (No Walls Against Refugees)*, produced by the Austrian Section of Amnesty International in April 1991. (In accordance with the principle that the protection of human rights is an international responsibility and in order to preserve the impartiality of its work, Amnesty International's national sections may not work on cases of torture or ill-treatment which occur in their own country; this work is done by the organization's members in other countries and by its International Secretariat. However, Amnesty International's sections may work on behalf of refugees and asylum-seekers in their own countries.)

¹² The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted by the General Assembly of the United Nations on 9 December 1988. Principle 17 states that: "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and *shall be provided with reasonable facilities for exercising it*" (Amnesty International's italics). Principle 19 further states that: "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and *shall be given adequate opportunity to communicate with the outside world*, subject to reasonable conditions and restrictions as specified by law or lawful regulations" (Amnesty International's italics).

shone a torchlight in his face, told him to put his hands up and searched him. The other officers rushed into the apartment and pointed their guns at Eunice Atewe who was still half asleep in bed. Osaren Atewe asked the officers what they were doing and demanded to see their identification papers and search warrant. The officers ignored him and started to search the flat. When they had finished they told the couple that they were looking for drugs. Osaren Atewe was allowed to put his hands down and went over to open the living room window. He alleges that as he was trying to open the window he was violently pulled to the floor by one officer and then kicked. When his wife protested she was slapped several times. Osaren Atewe tried to intervene but he was held by the two officers while another officer gave him a karate chop to the neck. Eunice Atewe also alleges that an officer kicked her in the stomach. Osaren and Eunice state that at one stage they were called "dirty niggers" and told to "go home" ("*dreckige Neger*¹³, *gehts ham*"). After the officers had left the flat Osaren and Eunice Atewe went to a nearby police station to complain about their treatment by the police. A certificate documenting Eunice Atewe's medical examination at Meidling Hospital (*Unfallkrankenhaus Meidling*) later that day shows that she had suffered bruising to the face and to the stomach.

On 14 January 1994 Osaren and Eunice Atewe were informed by the Vienna Public Procurator (*Staatsanwaltschaft Wien*) that an investigation had been carried out into allegations that the couple had been involved in drugs dealing and that Osaren Atewe had physically attacked an officer on 11 December 1993 during the search of their apartment. This investigation had since been closed and no charges were to be brought against either Osaren or Eunice Atewe.

Amnesty International is currently seeking information from the Austrian authorities regarding the outcome of the criminal complaint which Osaren and Eunice Atewe have lodged about their ill-treatment.

The case of Salim Y

In June 1993 two representatives of the New York-based Centre for Constitutional Rights witnessed the ill-treatment of an Algerian man at Vienna Schwechat airport during an attempt to deport him. The delegates, who were arriving to attend the World Conference on Human Rights which took place that month in Vienna, wrote to the Minister of Internal Affairs that they had "witnessed a handcuffed man with a bandage around his head being kicked and hit by two plainclothes men who were reported to be members of the [Linz] police. When we protested the beating, one airport official stated, 'This is not your problem'. Further protest to higher

¹³ See footnote 3 on page 3

officials produced the explanation that the beating resulted because the man was a `criminal', an `Algerian', and a `prisoner'".

Amnesty International wrote to the Austrian authorities about these allegations in July 1993 and again in January 1994 and asked whether a judicial investigation had been ordered into them and, if so, when it was expected to be completed. In February 1994 the organization was informed by the Deputy Director of the Division of Human Rights of the Federal Ministry of Foreign Affairs that according to information that it had received, Salim Y¹⁴, the detainee in question, had been taken to Schwechat airport on 10 June 1993 following the rejection of his application for asylum. The detainee had resisted his deportation "by pushing his head against a radiator and thus hurting himself. He was subsequently treated medically and considered apt, by a doctor, to be transported to Algeria". Half an hour later "he suddenly jumped up from his chair and rushed backwards into a safety glass door". He was caught by police officers who "had to overcome his resistance by holding him on the ground by force". He was finally escorted to his aeroplane but excluded from the flight by the captain. The Deputy Director concluded in his reply to Amnesty International that: "During the whole procedure Salim Y was neither kicked nor beaten." After a further unsuccessful attempt to deport him on 30 June 1993, Salim Y was released from detention that same day.

In March 1994 Amnesty International asked the authorities whether the alleged ill-treatment of Salim Y had been investigated by a judge, in accordance with the decree issued by the Justice Ministry on 15 September 1989. The organization also asked whether the detainee had been questioned personally by those responsible for the investigation into the incident, and whether either of the two people who had witnessed his ill-treatment had been required to provide further information about what they had seen at Schwechat airport.

An update to other cases previously documented

The case of Ahmet S. (see Concerns in Europe: May - October 1993, AI Index: EUR 01/01/94).

Four officers of Vienna Provincial Court Prison (*Landesgerichtliches Gefangenenhaus Wien*) charged with ill-treating Turkish prisoner Ahmet S. were acquitted by Josefstadt Local Court (*Bezirksgericht Josefstadt*) in April. Ahmet S. had alleged that in March 1993 he was hit in the face and kicked outside his cell and shortly afterwards beaten with a rubber truncheon in the segregation cell of the prison. In delivering her verdict on the case the presiding judge

¹⁴ The detainees's surname was given in full; here it is abbreviated as Amnesty International has not been able to obtain his permission to publish it.

commented that although she believed that Ahmet S. had been ill-treated, it had not been possible for the court to establish the identity of the officer responsible.

The case of Qani Halimi-Nedzibi (see Amnesty International Report 1992 and Concerns in Europe: November 1992 - April 1993, AI Index: EUR 01/01/93).

In November 1993 the United Nations Committee against Torture, a body of experts set up under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor implementation of the Convention by States parties, ruled in favour of a submission by Qani Halimi-Nedzibi. (Under Article 22 of the Convention a State Party "may declare that it recognises the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention". As of 1 March 1994 35 of the 80 states which had acceded to or ratified the Convention had accepted the competence of the Committee to deal with individual complaints by making a declaration under Article 22. Austria made such a declaration in 1987.)

Qani Halimi-Nedzibi had alleged that a police officer from the Lower Austria Drugs Squad had beaten him about the head, punched him in the stomach and forced his head into a bucket of water to force him to sign a false confession. Although Qani Halimi-Nedzibi made these allegations before an investigating judge in December 1988, no inquiry was launched until March 1990. In his submission to the Committee Qani Halimi-Nedzibi claimed that the failure of the Austrian authorities to investigate promptly his allegations of torture and the refusal by courts to exclude as evidence against him statements made by him and by several witnesses as a result of torture constituted a violation of Articles 12 and 15 of the Convention.

Although the Committee found insufficient evidence to sustain Qani Halimi-Nedzibi's allegations of ill-treatment, it concluded that the delay of 15 months before an investigation of the allegations was launched was unreasonably long and not in compliance with the requirement of Article 12 of the Convention.

This was the first time that the Committee had ruled on an individual complaint submitted to it. According to the Committee's rules of procedure, the Austrian Government is required within 90 days of receipt of the Committee's decision to furnish it with information on relevant measures it has taken in conformity with the Committee's views. The Committee has also requested the Austrian authorities to ensure that similar violations do not occur in the future.