

FEDERAL REPUBLIC OF GERMANY

Continuing pattern of police ill-treatment

1 Introduction

In May 1995 Amnesty International published a major paper (*Federal Republic of Germany: Failed by the system - police ill-treatment of foreigners*, AI Index: EUR 23/06/95, hereafter referred to as the May 1995 Report) detailing 20 of the more than 70 reports it had received in the period January 1992 to March 1995 alleging that German police officers had used excessive or unwarranted force in restraining or arresting people, or had deliberately subjected detainees in their custody to cruel, inhuman or degrading treatment or punishment. In its paper Amnesty International stated that the consistency and regularity of the reports it had received led it to conclude that the problem of police ill-treatment was not one of a few isolated incidents. On the contrary: after drawing together the information it had collected on individual cases over the past three years, Amnesty International believed that a clear pattern emerged of police ill-treatment of foreigners and members of ethnic minorities in Germany.

Since publication of Amnesty International's May 1995 Report, many other cases of ill-treatment that allegedly occurred in or before 1994 have come to the organization's attention. Some of these are described in Appendix I of this report. Further evidence supporting the findings of Amnesty International's May 1995 Report has also come from a number of other important sources in the last 18 months. These include the study "*Police and Foreigners*", commissioned by the Standing Conference of Interior Ministers of the *Länder*(1), which concluded in February 1996 that the problem of police abuse of detainees in Germany was not one of "just a few isolated incidents"; the Committee of Inquiry set up by Hamburg Parliament to look into allegations of abuse, including ill-treatment, in that *Land*, which concluded in November 1996 that it was not adequate to talk about "isolated cases of abuse by a few 'black sheep'"; and the Human Rights Committee (a body of experts which monitors states parties' compliance with the International Covenant on Civil and Political Rights), which in the same month, expressed concern about "instances of ill-treatment of persons by the police, including foreigners and particularly members of ethnic minorities and asylum-seekers". Finally, in 1995 and 1996 the UN Special Rapporteur on torture requested information from the German Government on a total of 10 cases in which it was alleged that people had been subjected to ill-treatment by police officers. A brief summary of all these findings is presented in this report.

Since May 1995 more than 40 fresh reports of ill-treatment have been received by Amnesty International, confirming the organization's central conclusion in its May 1995 Report that cases of alleged police ill-treatment are not isolated incidents but amount to a clear pattern of abuse. Many of these cases are documented here for the first time. As in previous years, the vast majority of the alleged victims are foreign nationals, including asylum-seekers, or members of ethnic minorities. In many instances the alleged ill-treatment appears to have been racially motivated. Medical evidence shows that the injuries suffered by detainees, mainly bruising and abrasions, and in some cases broken bones, have been consistent with their allegations that they had been punched, kicked or struck with a police baton.

This report also updates a number of cases which Amnesty International has documented in previous publications (see Appendix II for a list of these). The conclusions which emerge from this exercise are the same as those presented in the organization's May 1995 Report: namely, that although criminal investigations have been opened into all the cases of alleged police ill-treatment reported to Amnesty International, in many cases they have not been carried out promptly, impartially and thoroughly. Many of the officers allegedly responsible have therefore escaped prosecution, few, if any, have faced disciplinary sanctions, and none of the foreign or ethnic minority complainants have been compensated for the injuries they have suffered.

1.1 The study into “*Police and Foreigners*”

At the same time that the German authorities were rejecting the conclusions of Amnesty International’s May 1995 Report as “unjustified, unchecked... extremely one-sided [and] sweeping”(2) and asserting that any cases of police abuse were “isolated cases which are not to be generalized”(3), a major German study into “*Police and Foreigners*” was nearing completion. The conclusions of the study, commissioned by the Standing Conference of Interior Ministers of the *Länder* (*Innenminister- konferenz* or IMK) in the autumn of 1994, broadly echoed the findings of Amnesty International in its May 1995 Report.

The purpose of the study, carried out under the auspices of the Police Management Academy in Münster-Hiltrup (North-Rhine/Westphalia) was to “prepare officers better for contact, and also conflict, with citizens of foreign descent”. To this end, eight two-day workshops were carried out at the Universities of Trier and Münster, involving a total of 115 officers from various *Länder*, with the aim of collecting information about the officers’ experiences with, and attitudes towards, foreigners. The study was completed in the summer of 1995, discussed at the IMK’s meeting in Dresden in December of that year, and finally published in February 1996.

Although it appeared from the full title of the 150-page study - “*Police and Foreigners - the burdens and dangers faced by police officers in their dealings with foreigners*” - that it was police officers who were being cast in the role of victims, in fact the results of the study concluded that it was foreigners who were the real victims - of racially-motivated police abuse. In attempting to assess the extent of this abuse, the authors of the study stated that:

“The results suggest that what we are dealing with is not ‘just a few isolated incidents’, or a systematic pattern of behaviour by police, but rather a situation whereby many officers are simply overwhelmed by the stress they face in concentrated areas of population with high levels of illegal immigration and crime, and from large police operations against banned demon- strations... There is then the danger that the officers either simply give up, or that they give illegal expression to their idea of what is right or simply to their frustration and stress, by dispensing their own idea of justice”.(4)

In seeking to identify what measures were needed to prevent such cases of abuse, the authors of the study stressed the need for initiatives in the areas of training (see section 4 of this paper) and for more far-reaching structural changes in the organization of the police, and in the political and legal framework within which they carry out their work.

1.2 Report of the Committee of Investigation of the Hamburg Parliament into the Hamburg Police

On 5 October 1994, the members of Hamburg Parliament unanimously approved the setting up of a committee to investigate allegations of abuses by Hamburg police officers. The call for an inquiry had become loud after allegations had come to light of the ill-treatment of foreigners by officers of station 11, which in turn had led to the resignation of the then Interior Minister.(5) Between 14 October 1994 and 9 November 1996, the Parliamentary Committee of Investigation (*Parlamentarischer Untersuchungsausschuß* or PUA) met 57 times. Evidence was heard from a total of 101 witnesses and more than 3,000 files were examined. In November 1996 the PUA presented its findings in a 1,100 page report. The inquiry represented one of the most detailed examinations ever undertaken in the Federal Republic of Germany into allegations of ill-treatment by police officers.

The PUA's report begins with a statistical examination of the total number of investigations that had been launched into allegations of criminal wrongdoing by Hamburg police officers in the period 1989-95. During this time 3,828 separate criminal investigations had been started - over half of them into allegations that officers had ill-treated detainees in their custody. Of these 3,770 had been completed. In 3,164 of the 3,770 cases the investigations were discontinued for lack of evidence. In a total of 10 cases officers were issued with penal orders(6) (two for ill-treatment) and in 92 cases officers were charged (in 61 of these the charge was one of ill-treatment). In 31 cases where trial proceedings had been opened and concluded 12 officers were convicted (four of ill-treating detainees) and 19 acquitted (14 of ill-treating detainees). In the remaining cases the charges were either dropped, or trial proceedings were discontinued, in most cases after payment of a fine, or proceedings were still continuing. Of those cases still pending, a further four officers had been convicted of ill-treatment or ill-treatment by negligence and were awaiting the outcome of appeals.

With regard to the central allegations of abuses by officers from station 11, the PUA concluded that: "It can be assumed that in the rooms of station 11 ill-treatment in the form of physical abuse [of detainees] by police officers...took place. These acts were directed not only against foreigners, but also against Germans...Officers [of station 11] have often used pejorative, insulting and even racist expressions to refer to black Africans who dealt mainly in cocaine in the St Georg [district of Hamburg]"(7). In some cases, the PUA concluded, officers who were frustrated by their work in fighting drugs and who believed that the judicial authorities were too lenient with offenders "...appeared to have acted illegally and without authority by 'dishing out' their own punishment on the spot - in the form of physical abuse - to people they had arrested or detained"(8). Although the PUA was unable to quantify the number of cases of abuses that had occurred at station 11, it did conclude that the problem was not one of "isolated cases of abuse by a few 'black sheep'"(9). (Nor, the PUA found, could one talk about abuse on a systematic scale.)

The PUA's findings, in particular the statistics on the number of officers charged and/or convicted of abuses, represented for the German Police Officers' Union (GdP) "a clear exoneration for the Hamburg police from the allegations made against them"(10). The PUA was less confident - as was Amnesty International in its May 1995 report - that bare statistics on the number and outcome of criminal complaints against officers gives an accurate picture of the true extent of police abuse. According to the PUA:

"For one thing ill-treatment probably took place in some or several cases where complaints were rejected for lack of evidence, for another, it must be assumed that not all incidents of actual police abuse are made the subject of criminal complaints or are otherwise made known. An important factor here is that a large proportion of those people with whom officers from the St Georg district came into contact are people unlikely to complain, because they did not think a complaint was likely to have much success, or because they were not interested in pursuing the matter for a variety of reasons, for example, because they might have incriminated themselves."(11)

The PUA also identified a number of other factors which might help explain why so few officers who commit abuses are brought to trial, including the inadequate response by the police authorities to reports of ill-treatment they received, the fact that officers hindered investigations by covering up for their colleagues, and poor investigative work by the prosecuting authorities (see section 3.2 of this report).

Following publication of the PUA's report, the Hamburg authorities announced a number of measures which they had already taken, or which they were still considering, in response to the PUA's findings. These included: improved training for officers, improvements in their working conditions, reorganization of the police management structure, and a restructuring of the internal police group responsible for investigating abuses by police officers.

Amnesty International documented a number of allegations of ill-treatment of foreign detainees by Hamburg police officers in its May 1995 Report. An update to these is given below:

The alleged ill-treatment of detainees by Hamburg police officers: An update (see Appendix II, ¶)

In **February 1996** it was reported that a Hamburg court had fined an officer DM 9,000 (approximately £3,200) for ill-treating a black African at station 11 in 1992. According to the findings of the court, the detainee was made to stand naked against a wall while the officer sprayed him with disinfectant. Another officer testified that he saw the officer standing next to the detainee, with a spray can in his hand. The detainee's skin was wet and shiny. The court's verdict was overturned on appeal in November 1996.

In **May 1996** an investigation by the Hamburg prosecuting authorities into allegations that two officers had subjected an African in the Hamburg harbour area to a mock execution was closed due to insufficient evidence. The PUA examined the evidence relating to these allegations, concluding that although "there were some indications in the Hamburg police that 'mock executions' had taken place, these could not be verified because witnesses who may have been able to provide information had made use of their right to remain silent"(12).

In **June 1996** a Hamburg officer was reportedly fined DM 9,800 (approximately £3,500) for ill-treating and insulting a Nigerian detainee. The court established that the officer had struck the detainee in the face in June 1993 and had told him "I hate niggers". After the officer had told the Nigerian to undress he searched the detainee's clothes and, upon finding a condom, asked him: "Is this for a German girl"?(13)

In **January 1997** it was reported that a senior police officer had been charged with being an accessory after the fact. He was accused of knowing about abuses at station 11 and of failing to act.

1.3 The Human Rights Committee

In November 1996 the Human Rights Committee met to consider the Federal Republic of Germany's fourth periodic report on its compliance with the International Covenant on Civil and Political Rights (ICCPR), Article 7 of which states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"(14). In its conclusions, announced on 7 November 1996, the Committee expressed concern:

"...that there exist instances of ill-treatment of persons by the police, including foreigners and particularly members of ethnic minorities and asylum-seekers..."

and made several recommendations with respect to the investigation of complaints of police ill-treatment and police training. These are detailed in sections 3.2 and 4 of this report.

1.4 The UN Special Rapporteur on torture

The Special Rapporteur on torture is appointed by the UN Commission on Human Rights and receives information from other UN institutions or offices, non-governmental organizations and from individuals. If the rapporteur finds the information credible, he transmits it to the government in question and requests a reply.

In a letter dated 6 May 1996, the Special Rapporteur advised the German Government that he had "received information according to which a number of persons belonging to ethnic or national minorities residing in Germany had been subjected to severe beatings and other ill-treatment by police officers"(15). The Special Rapporteur also transmitted seven individual cases, to which the German Government provided

replies. (In 1995 the Special Rapporteur transmitted three individual cases to the German Government, on which it received replies.)

2 The alleged ill-treatment of detainees: new allegations and developments to cases already documented by Amnesty International

Since May 1995 Amnesty International has received more than 40 fresh allegations that police officers have used excessive or unwarranted force in restraining or arresting people, or have deliberately subjected detainees in their custody to cruel, inhuman or degrading treatment or punishment. A number of these cases are described below, together with updates to cases previously documented by Amnesty International. (Further case descriptions are also included in sections three and four of this report.)

The case of Renata K. (Frankfurt am Main, Hesse)

In the early hours of the morning of 15 October 1995, Renata K. was one of approximately 40 people left at a "Sixties Soul Music" party taking place in Frankfurt. According to a criminal complaint which Renata K. lodged with the Frankfurt prosecuting authorities on 26 October 1995, several uniformed and plainclothes police officers arrived at the party and became involved in a heated discussion with the DJ and the party organizer. (About an hour earlier several plainclothes officers had requested that the party music be turned down.) When one of the officers allegedly pushed the organizer to the ground, several people went to help him and to remonstrate with the officers. At this point the officers reportedly began to strike out at the people with their batons and with heavy torches they were carrying. Renata K. decided to leave immediately. On the way out she saw an officer strike a man on the back with a black object. Shocked at what she saw - the man, she said, had been leaving the room in an orderly manner - Renata K. asked the officer whether he was going to hit her too. According to her written complaint, the officer then did precisely that, causing her to fall to the ground. Renata K. alleged that the officer then hit and kicked her repeatedly in the kidneys, on the side of the body and on the legs. A medical certificate from 18 October 1995 shows that Renata K. had suffered injuries consistent with her allegations. These injuries included abrasions below the right tibia and bruising of the right patella, kidney and thoracic vertebra. In February 1996 Renata K. was informed that she was being investigated for resisting arrest and assault. (Police officers involved in the incident reportedly claimed that party guests had attacked them when they had tried to arrest the organizer.) However, the prosecuting authorities dropped their investigation in July 1996, arguing that the action of the officers in breaking Renata K.'s alleged resistance had resulted in such serious injury to her that "it appears inappropriate to punish her".

In May 1996 Amnesty International called upon the Hesse authorities to conduct a prompt and impartial investigation into the alleged ill-treatment of Renata K. In the same month, the Hesse Minister of Justice informed Amnesty International that he had asked the prosecuting authorities to examine the matter and to report on it. According to the Minister, the organization would be contacted when the report arrived. Amnesty International received no further response from the authorities. However, in December 1996 a Frankfurt newspaper reported⁽¹⁶⁾ that three officers had been charged with assaulting Renata K. and other guests at the party. The article quoted a spokesman for the prosecuting authorities as saying that officers had hit several people with metal torches.

Witnesses' account of police ill-treatment (Düsseldorf, North-Rhine/Westphalia)

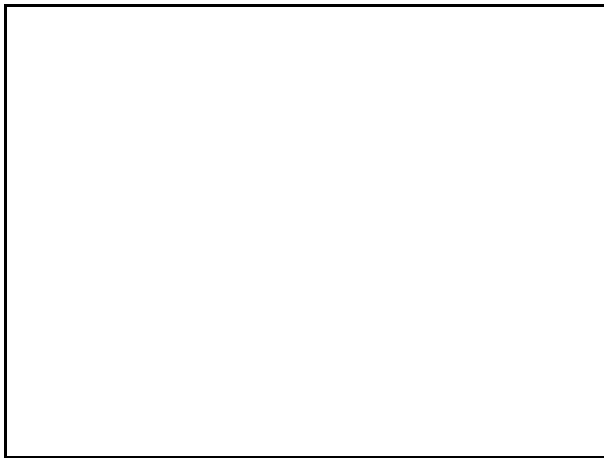
On 23 February 1996, at about 6.30 in the evening, 13 female members of a religious charity based in Aachen were enjoying a cup of coffee at a café in Düsseldorf railway station prior to catching a train to Paderborn. According to the women, two police officers came into the café and went up to a table where two black men were drinking a can of beer. The officers informed the men that they could not drink beer there and asked for their identity papers. One of the men, who did not have his papers on him, objected about the provocative way in which the officers were talking to him. (The women confirm that when the officers talked to the man, they repeatedly used the word "Du" - the less formal and respectful form of the pronoun "you".) When the black man made to leave the café, the officer pulled him back by his

sleeve. Feeling threatened, the man tried to take his arm away, whereupon one of the officers said: "Throw him on the floor!". According to the women, both officers then took hold of the man's arms and one of the officers kicked his legs from under him, causing him to fall towards the ground, still in the grip of the officers. At this point the women intervened, asking the officers whether their action had really been necessary. The officers handcuffed the man and pulled him up, causing the detainee to trip. According to the women, one of the officers then reportedly kned the detainee in the stomach. When the women again protested, the officer defended his action by saying that the detainee had gone for his service pistol. In a letter which they wrote to the Chief of Düsseldorf Police five days later, the 13 women, all of whom signed the letter, stated that it had been quite clear that the man had only tried to steady himself by grabbing hold of the officer's jacket. The women described the behaviour of the officers as "provocative, inappropriate and inhumane" and asked for the incident they had witnessed to be investigated. A week after they had written the women were informed that the matter had been passed to the prosecuting authorities. Five weeks later the women were informed by the Düsseldorf Public Prosecutor's Office that the investigation had been closed because it had not been possible to identify which of the many officers on duty in the station on the day in question had been responsible for the alleged ill-treatment. The women passed copies of their correspondence to Amnesty International with the comment that "apparently as 'ordinary citizens'...we can achieve nothing".

The case of Sefer Avci (Frankfurt am Main, Hesse)

Sefer Avci, a Turk who has been living in Germany for over 15 years, was spending the evening of 13 May 1996 at the Café Sol'de in Frankfurt celebrating the birth of his child with a few friends when four men and a woman, all in plain clothes, entered the café at about 11.30pm. According to Sefer Avci, one of the men shouted "Police! Identification check!" and came straight over to him. Sefer Avci insisted that before he produce his identification papers, the man should prove that he was a police officer. The man allegedly reacted to this by shouting and pushing Sefer Avci and by kicking him on the leg. This man then searched Sefer Avci, who continued to insist that he be shown some form of identification. Eventually the man took out his police officer's badge. Sefer Avci then fetched his jacket and took out an identification card issued by his employer, the Federal Post Office. A second officer picked Sefer Avci's jacket up and headed towards the entrance of the café, which has a small dark lobby area. Sefer Avci protested, insisting that his jacket be checked in full view of everyone, instead of being taken into a corner where something might be planted on him. When he tried to get his jacket back, the first officer allegedly twisted his arm behind his back and took him over to the entrance lobby where, according to Sefer Avci, the two officers proceeded to hit him on his body and legs, while the officers' colleagues stood at the lobby entrance to prevent any of the café's customers from seeing what was happening. The two officers then handcuffed Sefer Avci. When the detainee told them that he would make a complaint for assault, one of the officers reportedly showed Sefer Avci a scuff mark on his trouser leg and said that it was Sefer Avci who was guilty of assault and who would be made the subject of a complaint.

Sefer Avci was taken to Höchst Police Station from where he was released in the early hours of the following morning. On the same day he went to his family doctor who certified that he had suffered multiple bruises to his legs and back, and abrasions on the left lower arm and the right hand side of his chest, and that he was experiencing pain in the area of the right thorax and left arm. The doctor added that it was credible that the injuries suffered by Sefer Avci were the result of external physical force. Sefer Avci was declared as unfit to work until 22 May 1996. On 24 May 1996 Sefer Avci made a complaint to the Frankfurt police authorities, which they passed on to the prosecuting



Sefer Avci © Hürriyet

authorities. A representative of the Frankfurt Police was quoted in the Turkish newspaper *Hürriyet* as saying that Sefer Avci had shouted at an officer when requested to identify himself, and had hit the officer when he tried to search him. The officer had been sent for medical treatment.

In September 1996 Amnesty International raised the case of Sefer Avci with the Hesse authorities. In November 1996 the organization was informed by the Ministry of Justice that an investigation had been launched into Sefer Avci's allegations and that this would be carried out speedily and impartially. In fact the only investigation which appeared to be carried out speedily was the one into police allegations that Sefer Avci had resisted arrest and had assaulted an officer: four months after Sefer Avci had made his complaint of police assault he was surprised to receive a penal order from a Frankfurt court telling him that he had been fined DM 1,200

(approximately £430) for "resisting police efforts to check his identity by striking and kicking out at [two officers]". (According to the penal order, one of the two officers had suffered bruising to both thighs, a bruise to his elbow and scratch to his right nostril. No details were given of any injuries to the second officer.) In October 1996 Sefer Avci appealed against the penal order, and in March 1997 Sefer Avci's lawyer learned that it had been withdrawn, pending outcome of the investigation into Sefer Avci's complaint.

The case of A (Tönisberg, North-Rhine/Westphalia)

A, a Togolese national, alleged that on 23 May 1996 he was ill-treated by Krefeld police officers following a police raid on the Tönisberg asylum-seekers' hostel where he was living. A alleged that he had come out of a toilet in the hostel when he was hit on the shoulder by a police officer and pushed against a wall by the same officer and by three of the officer's colleagues. The officers asked him his name, then placed him in a police car and took him to Krefeld police station. A stated that at no time was he informed of the reason for his arrest. At the station his identity card and travel ticket were taken from him and he was fingerprinted and photographed. He was then thrown out of the station together with another asylum-seeker, T, who had been arrested with him. Through a gap in the station door A protested to an officer that his ticket had not been returned to him. The officer allegedly responded by punching him on the chin. A was then taken back inside the station where two other officers grabbed hold of him. According to A, one of the two officers held him while the second punched him in the kidneys. His ill-treatment was witnessed by T. A was released from the station an hour or two later. A medical certificate issued by his doctor on the same day as his alleged ill-treatment records that A had suffered bruising of the chin and side of the body.

A criminal investigation was opened immediately into the allegations of ill-treatment brought by A. A separate investigation was also launched into allegations that the asylum-seeker had resisted police officers in the performance of their duty and had attempted to assault an officer.

In January 1997 Amnesty International was informed by the prosecuting authorities that an officer had been convicted of ill-treating A. Amnesty International later learned that the officer had been issued with a penal order, instructing him to pay a fine of DM 7,000 (approximately £2,500), and that the investigation into allegations against the asylum-seeker had been dropped in accordance with section 153 (1) of the German Code of Criminal Procedure ("Non-prosecution in the case of minor matters").

The case of Sahhaydar and Hatice Yildiz (Berlin)

Sahhaydar and Hatice Yildiz allege that in the early hours of the morning of 24 October 1996 they were woken by noise and by the light from torches to find approximately a dozen men with helmets and shields in their bedroom. According to Sahhaydar Yildiz, several of the men - whom he assumed to be "neo-Nazis" - pinned him down on the bed and two of them began a prolonged assault on him, beating him on the head and body with their fists and batons. (Medical certificates show that Sahhaydar Yildiz suffered a fracture of the nose, bruising to the head and ribs and an injury to the thumb.) When Sahhaydar Yildiz cried out, the men reportedly turned him over onto his stomach and placed a gag over his mouth. Hatice Yildiz states that while the assault on her husband was taking place, one of the officers pushed her against the bed with his shield, hurting her in the process. She was then allegedly grabbed by the arm and hair and thrown against a cupboard before being dragged into the living room. (According to medical certificates, Hatice Yildiz's injuries included a fracture of the nose, multiple bruising and shock.) The couple's son, 13-year-old Serkan Yildiz, states that he was awoken by the noise to find several police officers in the room he shares with his brothers. One of the officers took hold of him by the collar and pulled him out of his bunk-bed. He was then led into the lounge by the officers who allegedly held a gun to the back of his head. Serkan Yildiz states that when he stopped in front of his parents' bedroom where he saw his father being beaten, he was slapped on the head and pushed into the living room. Serkan Yildiz's two brothers, Nurtac, who is 17 years old, and Sedat, who is nine years old, were also taken to the lounge to join their mother. Hatice Yildiz alleges that when she asked the officers in the lounge what was going on, they simply laughed and made insulting comments like "Shut your mouth, this isn't Turkey, we're the German police". (Sahhaydar and Hatice Yildiz have been living in Germany for 26 years. Hatice Yildiz was granted German citizenship in 1995. Her husband has also applied for citizenship.)

After the officers had thoroughly searched the flat - reportedly up to 40 officers of the SEK (*Sondereinsatzkommando* or Special Deployment Group) had taken part in the operation - a plainclothes officer explained



A scene in the Yildiz family apartment after the police raid

to Hatice Yildiz and her children that the officers had a warrant to search the flat for illegal weapons. Two handguns with ammunition were found in the flat. Sahhaydar Yildiz was arrested and remained in custody until after his trial on 8 January 1997 on charges of illegal possession of firearms. He was convicted and received a one-year suspended prison sentence. Reportedly an investigation is in progress into allegations that he is a member of a criminal organization. Sahhaydar Yildiz denies the allegations and states that he had acquired the firearms after several assaults on him at the restaurant he owns. (At least one such incident was reported to the police in March 1996.)

The Berlin prosecuting authorities have launched an investigation into allegations that Sahhaydar and Hatice Yildiz were ill-treated by police officers. A separate investigation into allegations by the officers involved that Sahhaydar Yildiz had resisted their authority was reportedly opened but later dropped. In April 1997 Amnesty International urged the Berlin authorities to ensure that criminal and disciplinary investigations were carried out promptly and impartially into the allegations made by Sahhaydar and Hatice Yildiz.

The case of C (Frankfurt am Main, Hesse)

According to a criminal complaint he submitted to the Frankfurt prosecuting authorities on 26 November 1996, German student C was sitting on platform 12 of Frankfurt railway station when he and his girlfriend, who was standing next to him, were suddenly surrounded by several officers of the Federal Border Protection Police. According to the couple, one of the officers told C to get up and produce his identity card. When C asked why, the officer reportedly said that

if he didn't comply "It will hurt". C states that he stood up and was about to take his identity card out of his pocket when two officers grabbed hold of him and pushed him towards the police station which is located just outside the southern entrance to the railway hall. Despite being told to remain behind, C's girlfriend followed the group at a distance and entered the station. However, officers allegedly ejected her.

C alleges that he was taken to an area in front of the cells where one of the officers struck him in the chest. The detainee immediately asked the officer for his service number. The officer reportedly reacted by ordering the detainee to undress. C states that, in fear, he complied with the order. As he was undressing, C repeatedly asked the officers why this measure was necessary, to which officers allegedly responded by pulling him to the floor. According to C, one of the officers banged his head on the ground and knelt on him while the second officer walked around them and repeatedly kicked C in the kidneys, legs and testicles. The detainee alleges that he was too afraid to cry out, because the officer who was kneeling on him held his fist in front of his face. C was reportedly pulled up by the hair and told to finish undressing. He was then ordered to face the wall and to bend over. He was allegedly kicked again. After being allowed to dress he was given a breathalyser test and informed that a formal complaint would be made against him for resisting officers, for using insulting behaviour and for trespass. As he made his way out of the station, he was reportedly hit again. According to medical certificates, C's injuries included bruising of the left thigh, left buttock, right side of the throat, and in the area of the kidneys, and abrasions of the left ear and right thigh.

The officers deny ill-treating C. In an article in the *Frankfurter Rundschau* from 13 December 1996, the officers' superior was quoted as saying that C had insulted the officers in the railway station, had resisted their efforts to take him out of the railway hall, and had kicked out at the officers in the police station.

In April 1997 Amnesty International called upon the Hesse authorities to conduct a full investigation into the allegations of ill-treatment brought by C. In the same month the organization was informed by the Hesse Minister of Justice that the incident would be investigated speedily and impartially.

The alleged ill-treatment of detainees by Bremen police officers

Sierra Leonean **Aliu B.** alleged that he was ill-treated by Bremen police officers on 29 October 1996. According to a criminal complaint submitted by his lawyer to the Public Prosecutor's Office in Bremen, Aliu B. returned to his room in a hostel in Bremen-Osterholz and was confronted by his room mate and by two police officers. One of the officers asked Aliu B. for his papers, which he produced, and for the key to his cupboard. According to his criminal complaint, when Aliu B. asked the officer why he wanted his key, the officer in question took hold of him by the collar and punched him twice in the face. Aliu B. fell onto one of the beds in the room and lay on his side. The officer then reportedly twisted his arms behind his back, placed his knee in Aliu B.'s chest and repeatedly asked him where the key to his cupboard was. Between each question the officer allegedly slapped Aliu B. on the face. Aliu B. was then pulled to his feet and ordered to undress. The officer looked through the clothes and found the key to the cupboard, which he proceeded to search. Aliu B.'s room mate had watched the officer ill-treat him and protested to the second officer and, later, to a third officer. Both of these officers reportedly told him that it was none of his business.

According to a medical examination which he underwent two days after the alleged ill-treatment, Aliu B. had bruise marks on the left eye, forehead and left temple and a superficial laceration of the left lower eyelid. The medical report of his examination stated that the injuries were two to three days old and were consistent with the use of physical violence.

Three weeks after the incident of alleged ill-treatment, and two weeks after he made his complaint, Aliu B. was informed that an investigation was under way into allegations that he had resisted police officers in the performance of their duty. In February 1997 Amnesty International called upon the Bremen authorities to conduct a thorough, prompt and impartial investigation into the allegations of police ill-treatment made by Aliu B. In March 1997 Amnesty International was informed by the Chief Public Prosecutor of Bremen that Aliu B. had been charged with resisting police officers in the performance of their duty. According to the Chief Public Prosecutor, Aliu B. had made no complaint of ill-treatment; however an investigation would now be launched into the incident Amnesty International had described. (In fact, Aliu B.'s complaint against the officers was sent by his lawyer to the Bremen Public Prosecutor's Office on 5 November 1996. On 15 November 1996 the prosecuting authorities confirmed to Aliu B.'s lawyer that the complaint had been received and registered.) In May 1997 Amnesty International learned that the charges against Aliu B. had been dropped, following a protest by his lawyer about the way in which his client's own complaint had been dealt with by the prosecuting authorities.

The incident of alleged ill-treatment by Bremen police officers described above is the second involving former asylum-seeker Aliu B. In April 1996 the then 16-year-old alleged that an officer slapped him twice on the face when he refused to be photographed following his arrest, allegedly for drug dealing, and that after refusing to drink an emetic he was handcuffed behind his back and held by two officers while a doctor forced a tube into his nose, causing it to bleed. After being made to drink a cup of liquid containing an emetic, which resulted in him being violently sick, Aliu B. was reportedly thrown out of the police station and collapsed in the station yard. Amnesty International raised these allegations with the Bremen authorities in April 1996.⁽¹⁷⁾ In January 1997 the organization was informed that an investigation into this incident was ongoing.

The case of Aliu B. is one of several cases which Amnesty International has raised with the Bremen authorities in which it is alleged that African detainees have been forcibly given emetics, and in some cases have been verbally threatened, physically ill-treated or racially abused when they refused to cooperate. In a letter to the authorities in August 1995, Amnesty International described in detail the cases of João S. and George B.⁽¹⁸⁾ The organization also asked the Bremen authorities why alternative options to the forced administration of emetics were not considered by the Bremen authorities and whether detainees were informed, in a language they understood, of the possible dangers and side-effects of the emetics they were forcibly given. In its reply to Amnesty International in February 1996, the Bremen Ministry of Justice provided no information on this last point. However, it did state that “natural elimination” was an alternative option to the forcible administration of emetics, without saying whether it was an option that had been used, and if not, why not.

The authorities also confirmed to Amnesty International that the forcible administration of emetics is sanctioned by section 81a of the Code of Criminal Procedure. According to section 81a:

“(1) A physical examination of the accused may be ordered for the ascertainment of facts which are important for proceedings. For this purpose the taking of blood samples and other penetrations of the body, made by a physician pursuant to the rules of medical science for purposes of examination, are permissible without the consent of the accused, providing no resulting detriment to his or her health is to be feared.”

The Ministry stated in its letter to Amnesty International that there must be a “clear suspicion” that the person in question has swallowed drugs for the purposes of concealment before emetics are administered, and that prior to emetics being administered, detainees are examined by a doctor and the results of this examination recorded. Finally, the Ministry informed Amnesty International that a total of six criminal complaints of ill-treatment, including those brought by João S. and George B. had been rejected by the prosecuting authorities.

In its reply to the Ministry’s letter in May 1996, Amnesty International stated that in its view the forcible administration of emetics to detainees against their will and for non-medical reasons amounts to cruel, inhuman and degrading treatment, and that any participation by medical personnel in such procedures represents an infringement of Principle 3 of the UN Principles of Medical Ethics (adopted by the UN General Assembly on 18 December 1982). According to this principle:

“It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health”.

Amnesty International also stated in its letter to the Bremen authorities that it had examined several of the complaints the Ministry had referred to in its letter, and remained concerned that in some cases the administration of emetics to detainees against their will appeared to have been an arbitrary or disproportionate measure, and may have been ordered by police officers with the sole purpose of subjecting detainees deliberately to cruel, inhuman or degrading treatment. Amnesty International also expressed concern at the apparent lack of adequate medical supervision of detainees who had been given emetics, and that the procedure continued to be used despite evidence of detrimental effects on detainees' health. Finally, Amnesty International expressed concern that investigations carried out by the prosecuting authorities into complaints of ill-treatment did not appear to have been carried out thoroughly and impartially. Amnesty International illustrated its concerns by referring to a number of individual cases, including those of João S., George B., and Yasin D.:

João S., an Angolan national, had alleged that when he was arrested in June 1994 he handed over drugs in his possession to police officers but was given an emetic anyway. (João S. stated that the arresting officer told him: "I like it when you Negroes get given an emetic".) According to the detainee, the emetic was administered against his will and under the threat of violence. The detainee also alleged that he had not been properly examined by the doctor prior to the procedure being carried out. After vomiting violently, João S. was reportedly sent home. No evidence of drugs had been found. As he was leaving the station, officers allegedly taunted him with shouts of "Negro, Negro" and made retching noises. João S. was obliged to take a taxi home, and had to interrupt his journey in order to vomit. He was also suffering from severe diarrhoea, causing him to soil his trousers. Following repeated bouts of vomiting, during which he also brought up blood, he was taken to hospital by friends. There he received treatment for severe abdominal pains and was not released until three days later. João S.'s complaint of ill-treatment was rejected by the Bremen prosecuting authorities in January 1996. According to the report of their investigation, the arresting officer had seen João S. make "swallowing movements"; the authorities were therefore justified in ordering the forcible administration of emetics. The doctor involved also stated that he questioned the detainee in detail before administering the emetic. (According to Amnesty International's information, however, there was no evidence of this in the investigation file.) In a letter to the Bremen authorities in May 1996, Amnesty International criticized the prosecuting authorities for failing in their investigation to examine whether the administration of emetics against the will of the detainee was a proportionate use of force in this case, given that the officers had already obtained from the detainee, without the need for coercion, sufficient evidence to mount a prosecution. Amnesty International also criticized the prosecuting authorities for failing to examine João S.'s allegations that police officers subjected him to racist comments, and for failing to clarify which station he was released from. (João S. had alleged that he was released from a police station approximately 20 kilometres from his home, without money or a travel ticket.)

George B., a Liberian national, was arrested in August 1994 after a police officer was reportedly told by someone at Bremen main railway station that either George B. or another person - he was not sure which - had sold him drugs concealed in his mouth. George B. was subjected to a thorough search at the police station; no drugs were found on him. He denied that he had swallowed any drugs, and apparently no one claimed to have seen him do so, yet still emetics were forcibly administered to him. Again no drugs were found. In their examination of his complaint, the Bremen authorities made no mention of any medical examination of the detainee prior to the administration of emetics. According to Amnesty International's information, the doctor involved had stated that he tried to carry one out, but that the detainee refused to cooperate. However, this did not deter the doctor from proceeding to administer emetics against the detainee's will, in this case by handcuffing the man and trying, unsuccessfully, to force a tube into his nose. The emetic was eventually administered orally. In their report of their investigation into George B.'s complaint, the prosecuting authorities state that officers observed the detainee for an hour after he had been given the emetic, then released him when "it appeared responsible to do so". George B. states that he repeatedly vomited during the 24 hours after he was released from police custody and that he suffered from diarrhoea for a week.

Guinean **Yasin D.** was forcibly given emetics in November 1994, despite his protestations to the doctor present that he had recently suffered from stomach pains. In fact, only days earlier he had been treated for suspected gastritis. In March 1995 he made a criminal complaint alleging ill-treatment. This was rejected by the Bremen prosecuting

authorities in January 1996. According to the prosecuting authorities' written decision on his complaint, a doctor had examined the detainee, and concluded that he must have been lying about his recent illness. However, the prosecuting authorities' report contains no mention of any detailed questioning of the detainee by the doctor prior to the procedure, or of any examination of him after it. As in the cases of João S. and George B., the administration of emetics produced no evidence that the detainee had swallowed drugs.

In its letter of May 1996, Amnesty International urged the Bremen authorities to reopen the investigations into the alleged ill-treatment of João S., George B. and Yasin D. and to ensure that the new investigations were thorough and impartial, in accordance with Article 12 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).

In July 1996 the Bremen Ministry of Justice informed Amnesty International that the investigations into the allegations brought by João S. and George B. had been reopened, following appeals by the two men's lawyers against the prosecuting authorities' decision to reject their complaints. In December 1996 Amnesty International learned that the Director of Public Prosecutions in Bremen had ordered the investigation into the complaint of ill-treatment brought by Yasin D. to be reopened following an appeal by his lawyer.

In a further letter to Amnesty International in January 1997, the Bremen authorities informed Amnesty International that a recent ruling by Frankfurt Regional Court that the forcible administration of emetics was unlawful would not cause them to abandon the practice. According to the authorities, the practices which the Frankfurt court had criticized in the case before it were not comparable with those employed by the Bremen authorities. For example, in the case examined by the Frankfurt court, the quantity of emetic orally administered to the detainee had been three times the normal dose. The detainee in question had also been given an injection of Apomorphine. Amnesty International has examined the Frankfurt court's ruling and does not share the Ministry of Justice's interpretation of it. The ruling clearly states that "The forcible administration of emetics was not covered by the Code of Criminal Procedure [and was] totally without legal foundation...Causing [the detainee] to vomit is...a nasty, inappropriate treatment [and represents] an infringement of Article 1(1) of the German Constitution, according to which it is the duty of all state authority to protect the dignity of man". The court later adds, with reference to the excessive quantities of emetics used in the specific case it examined, that: "Furthermore(19) the measure represented an infringement of the general principle of proportionality"(20). The Frankfurt ruling, made in October 1996, appeared to contradict an earlier one made by the Düsseldorf Regional Court in March 1994. The legal uncertainty surrounding this issue is expected to be resolved when the Federal Constitutional Court, which is currently examining the question of the admissibility of evidence obtained by the forcible administration of emetics, finally delivers its judgment.

The case of Habib J. (Berlin): An update (See Appendix II, 6)

At the end of May 1997 the retrial of two officers accused of ill-treating Habib J. had still not begun. Habib J. alleged that a Berlin bus driver had assaulted and racially abused him in December 1992. When police officers were called to the scene by the driver, Habib J. was pulled out of the bus and thrown into a police van with such force that his head banged against the vehicle. The incident was witnessed by a woman who happened to be passing by the bus-stop at the time. She later confirmed that she had seen the driver go to the back of the bus where Habib J. had been sleeping, take his head in both hands and strike it against the window until the whole bus shook. (The driver was later tried and acquitted of charges of assaulting Habib J. An appeal against the court's verdict is still pending.) She also confirmed that the officers brutally took hold of Habib J. and "chucked him into the back of the van...like an animal". Habib J. alleged that after arriving at police station 33 in Perleberger Street, he was again racially abused and assaulted by police officers. Medical examinations revealed that Habib J. had suffered impaired vision and bruising to the face.

Habib J., who was granted political asylum by the German authorities in 1988, made an official complaint about his ill-treatment by the police, and in January 1994 charges were brought against four officers. In September of that year three officers were convicted of causing Habib J. bodily harm and were fined sums of between DM 10,500-12,600 (approximately £3,750-£4,500). One of the them was also found guilty of insulting the Iranian. The three officers successfully appealed against their convictions in July 1995. Habib J. took the case to the highest court in the federal state of Berlin, and in July 1996 the judges of the *Kammergericht* ordered a retrial of the three officers, arguing that the appeal court's findings had been "contradictory and full of holes".

The case of Nasreddine Belhadebs (Erfurt, Thuringia): An update (see Appendix II, Ө)

In May 1996 the investigation into allegations that Erfurt police officers assaulted Algerian asylum-seeker Nasreddine Belhadebs in September 1993 was discontinued. In a criminal complaint he lodged with the Erfurt prosecuting authorities in October 1993, Nasreddine Belhadebs alleged that three men in civilian clothing set upon him, without warning, as he was on his way home. According to the asylum-seeker, one of the men knelt on his shoulder, causing him serious injury(21). The police officers involved alleged that they had called out "Stop, police!" several times to Nasreddine Belhadebs, but that he had ignored them. In January 1995 the Erfurt prosecuting authorities discontinued their investigation into Nasreddine Belhadebs's complaint, concluding that although the officers who arrested him had used a disproportionate amount of force, it could not be proved that they had acted with criminal intent. The question as to whether the officers had been criminally negligent in their actions was left open because, according to the prosecuting authorities, even if it could be established that they had, it would still not be possible to identify which particular officer had been responsible for the injury to the complainant's shoulder. Nasreddine Belhadebs's lawyer appealed against the decision to discontinue the investigation, and it was this appeal which was rejected in May 1996.

In explaining the reasoning behind the decision not to charge any of the officers involved, the Thüringia Ministry of Justice informed Amnesty International in June 1996 that despite further investigation by the prosecuting authorities - which included the commissioning of an expert medical report - it had still not been possible to ascertain which officer may have been responsible for causing the injury to Nasreddine Belhadebs's shoulder. Furthermore, the Ministry said, the expert medical report had concluded that the injury was not the "typical sort of injury resulting from arrest and there were therefore continuing doubts about the extent to which the injury could have been foreseen and thus prevented". Nasreddine Belhadebs's lawyer viewed the prospects of winning a civil claim for damages as too slim and advised his client against pursuing a potentially costly case.

The case of Nguyen T. (Berlin): An update (see Appendix II, ґ)

In January 1996 two Berlin police officers appeared before a Berlin court on charges of ill-treating Nguyen T., a Vietnamese asylum-seeker. Nguyen T. alleged that he was punched and repeatedly kicked when plainclothes police officers arrested him and his wife in the street in the east Berlin district of Pankow in June 1994 for selling untaxed cigarettes. Nguyen T. alleged that his ill-treatment continued in the police car which took him to a nearby police station, and at the station itself. Both the officers denied the charges.

In a 32-page written judgment on the case, the court concluded that neither the explanations given by the complainant and his wife, nor those given by the accused officers was "entirely credible and convincing". The court's task had, it said, been made even more difficult by the fact that it had not been able to obtain a "personal impression" of the complainant or his wife, as neither had appeared at the trial. In its other findings the court rejected the evidence of one female witness who supported the complainant's allegations (on the grounds that her statement to the court differed from that which she had made immediately after the incident a year and a half earlier) and attached more importance to evidence given by three other witnesses, all of whom said that they had not seen the officers ill-treat Nguyen T. (However, even here the court had to acknowledge that these witnesses had "each been able to observe only part of the full sequence of events".)

The court also heard evidence from the doctor who treated Nguyen T.'s injuries four days after the alleged assault on him. According to the doctor, it was more likely that Nguyen T.'s injuries, which included multiple bruising to his body and a hairline fracture of the bone under his left eye, had resulted from the deliberate use of force, rather than from a fall or from the detainee's attempts to resist arrest. However, the court concluded that the injuries could have been inflicted after Nguyen T.'s release from the police station, perhaps by someone angry that Nguyen T. had lost his consignment of contraband. (The court heard no concrete evidence to support this theory, but stated in its written ruling that "many similar cases were known".) Taking all the evidence together, the court concluded, Nguyen T.'s "allegations could not be upheld with the degree of certainty necessary for a conviction". Nguyen T.'s lawyer lodged an appeal against the officers' acquittal but later withdrew it on the grounds that it was extremely unlikely to succeed without Nguyen T. and his wife available to testify in person.

The case of H (Brandenburg): An update (see Appendix II, ñ)

At the end of April 1997 the trial was still continuing of eight Bernau police officers charged with 23 separate counts of ill-treating detainees in their custody. The alleged ill-treatment, involving a total of 15 Vietnamese (including H) and one Polish detainee, took place between February 1993 and June 1994. The officers were charged in February 1995 and the trial against them was opened in January 1996. Most of the cases of alleged ill-treatment followed a similar pattern: the detainees, many of whom were suspected of selling untaxed cigarettes, were reportedly ill-treated when they were arrested in Bernau, a town approximately 25 kilometres north-east of Berlin in the *Land* of Brandenburg. Their ill-treatment - consisting mainly of punches and kicks to the face and body - allegedly continued at the police station to which they were taken. Many of the detainees stated that at the station they were told to undress and were humiliated by the officers who photographed them and made them pull faces. One alleged victim told Amnesty International that the officers treatment of him made him feel "like an animal".

The case of Mohamed Z. (Hesse): An update (see Appendix II, ò)

In June 1996 it was reported that an officer had been suspended in connection with the alleged assault on Mohamed Z. In a criminal complaint which he lodged with the prosecuting authorities in January 1996, Mohamed Z. alleged that the officer pushed him against his car during an identity check in the centre of Frankfurt, and then started to punch him on the head and body. When Mohamed Z. sought to escape the blows, the officer handcuffed his hands behind his back. The same officer then allegedly hit him on the head with a torch he was carrying, and while the Moroccan was on the ground, kicked him in the face and on the body. Mohamed Z. states that he was put into a police car and taken to a police station. He alleges that he was not told of the reason for his arrest. At the police station he was placed in a cell. There, according to his criminal complaint, he was made to undress and punched and kicked again by the same officer who had allegedly ill-treated him in the street. Two other officers were reportedly present. A medical examination later revealed that Mohamed Z. had suffered multiple bruising and abrasions, and cuts to his head which required stitching.

3 The investigation and prosecution of allegations of police ill-treatment

In its May 1995 report Amnesty International concluded that: "Although Germany has created a structure to investigate allegations of torture and ill-treatment, this is not working as thoroughly as it should do. It has not, therefore, been effective in preventing the use of torture or ill-treatment". Amnesty International's main criticisms were that investigations into alleged police ill-treatment often take too long to conclude, and that prosecuting authorities do not always examine the available evidence thoroughly and impartially. (According to Article 12 of the Convention against Torture, States Parties to the Convention are required to conduct "prompt and impartial investigations" into all allegations of torture or ill-treatment.)

Many of the cases which Amnesty International has examined since May 1995, provide further evidence to support the organization's findings in its earlier report.

3.1 The failure to investigate promptly

In its May 1995 Report Amnesty International stated that the average duration of each investigation in the cases it had documented was over nine months. In many of the cases the organization has documented since May 1995 investigations have taken even longer to conclude.

The case of Dr K. (Brandenburg)

According to written statements they have made, Dr Waldemar Kalita, a 41-year-old medical doctor, and a neighbour, both from Gubin, a Polish town near the German border, were driving home on the evening of 15 December 1994 having completed some Christmas shopping in the German border town of Guben (in the *Land* of Brandenburg). While they were waiting in a queue of traffic to cross the border, Dr Kalita and his neighbour suddenly heard shouting and banging at the back of their car. Dr Kalita stopped the engine to get out and check what was happening but, before he managed to unfasten his seat-belt, a man reportedly came running towards him, shouting: "What do you want from me?". Surprised, Dr Kalita replied: "I don't want anything, what do you want from me?". Concerned by the man's aggressive attitude towards him, Dr Kalita tried to close the door. However, according to Dr Kalita, the man prevented him from doing this, grabbed his arm and tried to pull him out of the car, at the same time punching him in the face and knocking his glasses off. A second man arrived and he also reportedly started punching Dr Kalita in the face and on the head. When Dr Kalita asked them, in German, what was going on, they simply allegedly carried on hitting him. Eventually Dr Kalita fell out of the car. (It was only later that he learned from his travelling companion that the men had also hit him in the face with a baton.) The two men then pressed Dr Kalita to the ground and allegedly kicked him in the stomach. His arms were twisted round his back and handcuffs applied. Again Dr Kalita protested, saying that perhaps he had been mistaken for someone else. To this one of the men allegedly responded by shouting: "Quiet, shut up you...I know your people".

The two men then forced Dr Kalita into a van where the detainee asked them whether they were from the police. One of the men reportedly replied "What do you think?" and held his fist in front of Dr Kalita's face. The detainee was told "We are from the Federal Border Protection Police". After checking his passport, the officers took the handcuffs off Dr Kalita and reportedly told him to drive off. Dr Kalita immediately turned back into Guben and lodged a complaint about his ill-treatment at a police station. From there he was sent to hospital where an examination revealed that he had suffered swelling and bruising to his face, bruising of the ribs, and abrasions to both wrists. He was also experiencing pain in his head, abdomen and leg. A report by a Polish eye-specialist later confirmed that he had also suffered an injury to his left eye.

In an article published in the *Berliner Zeitung* on 20 January 1995, the Public Prosecutor's Office in Cottbus, Brandenburg, confirmed that Dr Kalita had issued a complaint against officers of the Federal Border Protection Police for assault, and that officers had brought a counter complaint against Dr Kalita for resisting officers in the performance of their duty. The officers denied ill-treating Dr Kalita, alleging that he had refused to show his identification papers and had insulted the officers.

Amnesty International first raised the case of the alleged ill-treatment of Dr Kalita with the German authorities in April 1995. In May 1995 the Minister of Justice of Brandenburg informed the organization that he had instructed the prosecuting authorities to conduct their investigation as speedily as possible. Sixteen months later, in October 1996, the ministry informed Amnesty International that the questioning of witnesses had not yet been completed.

In March 1997, 27 months after Dr Kalita first complained about his alleged ill-treatment and, according to Amnesty International's information, 21 months after the principle witnesses involved had been questioned by the authorities, Amnesty International was informed by the Minister of Justice of Brandenburg that the Cottbus prosecuting authorities had informed him of their intention to drop the investigation. According to the Minister, two very different versions of events had emerged from the investigation - one presented by Dr Kalita and his passenger, the other by the suspected officers and their colleagues. The Minister emphasised in his letter that both the Director of Public Prosecutions of Brandenburg and experts in his own ministry had concurred with the prosecuting authorities' decision not to charge any of the officers involved. The Minister also expressed his "extreme regret that it had not been possible to shed the desired amount of light on the events of 15 December 1994". In May 1997 Amnesty International expressed concern to the

Minister of Justice of Brandenburg about both the length of time it had taken the prosecuting authorities to investigate the criminal complaint brought by Dr Kalita, and about the authorities' failure to pass the case over to a court for examination, given that they themselves had been unable to resolve contradictions in the evidence they had collected.

The case of Ziya Y. (Duisburg, North-Rhine/Westphalia)

Turkish national Ziya Y. alleged that he was ill-treated on the evening of 28 February 1995 when more than a dozen armed men wearing masks - it later turned out that they were police officers - burst into the Café Royal in Mülheim an der Ruhr. According to Ziya Y., the men did not identify themselves but merely shouted "Don't move" to himself and to the other customers in the café. Ziya Y. states that when one of the men, whom he assumed to be terrorists or criminals, pointed his gun straight at him, he instinctively tried to defend himself by pushing the weapon away and was then pistol-whipped in the face and on the head and struck in the ribs. According to the results of a medical examination conducted later the same day at St Marien Hospital in Mülheim, Ziya Y. suffered a cut to the head, a bruise on the skull, a fracture of the ribs and a bruise on the left cheekbone. It was later reported that the men who had entered the café were members of a Special Deployment Group under the control of the Essen and Düsseldorf police. The officers had entered the café in search of three men suspected of involvement in a series of armed raids on banks.

In April 1997 Amnesty International asked the authorities of North-Rhine/Westphalia why the investigation by the Duisburg prosecuting authorities into the allegations of ill-treatment brought by Ziya Y. had still not been concluded more than 25 months after he had submitted his complaint.

The case of Binyamin Safak (Frankfurt am Main, Hesse): An update (see Appendix II, ñ)

In June 1996 it was reported that a police officer had been suspended from duty on suspicion of ill-treating Binyamin Safak. Binyamin Safak, who was born in Germany and is of Turkish nationality, alleged in a criminal complaint he made on 12 April 1995 that he was racially abused and physically ill-treated by two police officers following his arrest in the centre of Frankfurt two days earlier, after an argument with officers over parking. The detainee alleged that he was taken to a police station and placed in a cell where two officers kicked and punched him in the face, chest, head and arms. At one stage one of the officers reportedly took him by his hair - which at the time was very long, almost reaching down to the small of his back - and flung him head first against the wall. During the course of the alleged assault on him, which Binyamin Safak states lasted about an hour, the detainee was unable to offer any resistance because his hands were still secured behind his back. As a result of his injuries, Binyamin Safak was hospitalized for a week. According to an article in the Turkish-language newspaper *Hürriyet*, a police spokesperson was quoted as saying that Binyamin Safak had sworn at police officers and had become aggressive. As a result of his behaviour the officers had had to make him "ineffective".

The case of Binyamin Safak received considerable publicity following publication of an Amnesty International 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, Amnesty International referred to the case as one of alleged ill-treatment amounting to torture.(22)) In an article which appeared in the *Frankfurter Rundschau* on 7 February 1996, two days after publication of Amnesty International'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 Amnesty International. These letters,

the spokesman said, had given the investigation “a boost”.(23) (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.)

At the end of April 1997 the investigation into Binyamin Safak’s complaint of assault against Frankfurt police officers had still not been completed. (In March 1997 Amnesty International had been informed by the Frankfurt prosecuting authorities that the delay in concluding the investigation was

due to a number of factors, including the large number of officers to be interviewed; the fact that the case was linked to a number of parallel investigations; and the apparent reluctance of the complainant to attend an identity parade.)

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.

The case of Muhamed A. (Cologne, North-Rhine/Westphalia): An update (see Appendix II, Ö)

In March 1996 the Director of Public Prosecutions in Cologne informed Amnesty International that he had ordered the investigation into allegations that police officers had ill-treated Muhamed A. to be reopened following an appeal by Muhamed A. More than a year later, and over two and a half years after Muhamed A. first complained about the assault on him, the authorities had still not concluded their investigation.

Muhamed A. had alleged in October 1994 that a police officer had struck his head with full force against the boot of a police car, breaking one of his front teeth. He also alleged that at the police station he was taken to an officer punched him in the face. Medical certificates confirmed that he had suffered a broken tooth, an injury to the jaw and neck, and a cut on his right hand. In October 1995 the Cologne prosecuting authorities concluded that there was no evidence of ill-treatment by any of the officers involved in his arrest and detention. The following month Amnesty International expressed concern to the North-Rhine/Westphalia Minister of Justice that the investigation into Muhamed A.’s allegations did not appear to have been prompt and impartial: the prosecuting authorities had ignored key medical evidence; had rejected the testimony of the victim and his friends on the grounds that they were biased; had failed to examine the victim’s allegations that he was ill-treated inside the police station; and had failed to question personally the victim, the accused officers and other witnesses and to visit the scene of the alleged ill-treatment, in accordance with official guidelines for the conduct of criminal proceedings. Amnesty International called upon the Cologne prosecuting authorities to reopen immediately the investigation into Muhamed A.’s allegations of police ill-treatment and to ensure that the new investigation was prompt, thorough and impartial.

Delays in investigating allegations of ill-treatment not only place unacceptable emotional strain on the alleged victim, as well as on the suspected officers, if they are innocent, but can also reduce the likelihood that the officers responsible will be eventually punished. Thus, in February 1996 a court acquitted three officers charged with ill-treating Lutz Priebe in a Hamburg police station in August 1989, concluding that it



Binyamin Safak after release from police custody

was no longer possible to clarify what had actually happened in the station almost six and a half years after the event. (Lutz Priebe had alleged that officers at station 16 had struck his face against the edge of a table, breaking his nose. The officers claimed that the detainee had fallen against a chair.(24)) Although a court had awarded Lutz Priebe compensation for his injuries in February 1993, charges were not brought against the officers until March 1995.

3.2 The failure to investigate thoroughly and impartially

It is the role, and indeed duty, of public prosecutors to investigate all information brought to their attention which indicates that a criminal offence may have been committed(25). Such information would include an allegation that a police officer had ill-treated a detainee in his custody. They may call upon the “agencies and officials of the police” to assist them in their investigations.(26) In fulfilling this role as “auxiliary officers”, the police are required to obey the orders and instructions of the public prosecutor.(27) Section 3 (I) of the Guidelines for the Conduct of Criminal Proceedings further specifies that: “In important cases, or in cases which are difficult by their nature or in terms of the points of law they raise, public prosecutors should themselves clarify the facts of the case at the earliest point of involvement. In particular they should visit the scene of the crime and should themselves question the suspect and the most important witnesses”.

From many of the cases examined by Amnesty International since May 1995, it is evident that public prosecutors are failing to adhere to these guidelines. Some authorities even openly acknowledge this. Thus, for example, in responding to Amnesty International’s recommendation that public prosecutors should themselves interview the alleged victims of police ill-treatment, the suspected police officers and other witnesses, and visit the scene of the alleged ill-treatment, the Berlin Ministry of Justice commented in July 1995 that:

“This is already the practice of the Berlin prosecuting authorities *in some cases*(28). In particular the vast majority of the alleged victims are interviewed by the prosecuting authorities and not by the police. However, due to their high volume of work, it is not possible for the Berlin prosecuting authorities to take on all the investigative work.”

The Code of Criminal Procedure also states that the prosecuting authorities must ensure that the necessary evidence is obtained, and that all the circumstances of the case, whether incriminating or exonerating, are examined(29). They must then charge the suspect(s) if there are “adequate grounds” for doing so.(30) “Adequate grounds” exist if the suspected person, is “sufficiently suspected of having committed a criminal act”(31), meaning that the balance of probability must be that a court would convict the person if he or she were charged and tried for the offence in question. According to legal commentators: “The legal concept of ‘sufficient suspicion that a criminal act has been committed’ is an imprecise one and leaves a not inconsiderable amount of room for personal judgment; it can be left to a court to resolve the contradictions between the information provided by the suspect and the results of the evidence obtained”.(32)

Amnesty International believes that prosecuting authorities are failing in their duty to examine thoroughly and impartially the incriminating and exonerating circumstances of each and every case of alleged police ill-treatment. A number of cases where Amnesty International has criticized investigations into criminal complaints of police ill-treatment are presented below.

The case of Mustafa K. (Berlin)

In July 1996 Mustafa K., a Turk, alleged that Berlin police officers ill-treated him just after midnight on 2 July 1996 when he protested about their action in searching his flat without a warrant. (The officers had told the Turk that his son had been caught drawing graffiti, and that they were looking for evidence. They did not need a warrant, the officers stated.) When Mustafa K. ordered the officers to leave his flat, two of them, one in plain clothes and one in riot gear, allegedly forced him to the floor of his bedroom and, together with two or three colleagues, proceeded to hit him with their gloved fists and with a torch, and to kick him in the head and on the body. Mustafa K. was then reportedly dragged outside to a police van, crying. A police officer called for the van to be cleared and told his colleagues to throw the detainee onto the floor of the vehicle. Mustafa K. was then reportedly thrown into the van and was unable to protect himself from the fall because his hands were handcuffed behind his back. Inside the van the detainee was allegedly held down and kicked again. When he started screaming, the doors of the van were shut. According to Mustafa K., the physical abuse continued in the van, during the journey to Eiswaldtstraße Police Station. The officers also insulted him verbally, calling him, among other things, a “shitty Turk” and telling him that in Turkey things were far worse. When one police officer searched Mustafa K.’s pocket and found he had a German passport, he and his colleagues reportedly laughed and said: “Aha, an immigrant! But he’s still a Turk”. Officers allegedly then discussed how they could accuse the detainee of trying to attack them with a key. Following his release from the station some time later, Mustafa K. dragged himself to a hospital. According to the First Aid Report of 2 July 1996, issued by the Emergency Department of St Marienkrankenhaus, and to a medical certificate issued by his family doctor two days later, Mustafa K. had suffered bruising of the rib and multiple bruising of the face, wrist, shoulders and arms. He was declared unfit to work until 22 November 1996.

In a press statement dated 9 July 1996, a police spokesman commented that Mustafa K.’s version of events was very different from that given by the police officers involved. It was also reported that an investigation by the prosecuting authorities into the incident would be launched, and that a counter complaint had been made against Mustafa K. for resisting arrest and assault.

In December 1996 Amnesty International called upon the German authorities to ensure that the investigation into Mustafa K.’s allegations of ill-treatment was carried out thoroughly, promptly and impartially. In March 1997 the organization was informed by the Public Prosecutor’s Office that the investigation into his complaint of ill-treatment had been discontinued. According to the prosecuting authorities, the officers involved denied ill-treating Mustafa K., unanimously claiming that the complainant had sought to prevent them from searching his flat and had attacked them. The officers also stated that Mustafa K. had resisted their attempts to arrest them, and that, in order to break his resistance, one of the officers had had to strike him once. Finally, the officers claimed that they had neither ill-treated nor insulted the detainee in the police vehicle into which he was put following his arrest. According to the Public Prosecutor’s investigation report, there was no other evidence which could disprove the officers’ version of events. “In particular, no neutral witness noticed any ill-treatment”.

After examining a copy of the full investigation report, Amnesty International wrote to the Berlin Director of Public Prosecutions in April 1997, expressing concern that in their investigation the prosecuting authorities had failed to treat all the available evidence equally and impartially(33), and had contravened the Guidelines for the Conduct of Criminal Proceedings by failing to interview any of the witnesses, including the officers involved, in person(34). Amnesty International called for the investigation into the alleged ill-treatment of Mustafa K. to be reopened, and for the new investigation to be carried out impartially, as required by Article 12 of the Convention against Torture. In the same month Amnesty International learned that an appeal by Mustafa K. against the prosecuting authorities’ decision to reject his complaint had been turned down, and that he himself had been charged with resisting arrest.

The case of Azad Kahn Fegir Ahmad, Noorol Hak Hakimi and Mohammed Nabi Schafie (Leipzig, Saxony): An update (see Appendix II, ¶)

In April 1996, following a 10-month investigation, the Leipzig prosecuting authorities rejected the complaint brought by Afghan asylum-seekers Azad Kahn Fegir Ahmad, Noorol Hak Hakimi and Mohammed Nabi Schafie that officers had stormed into the mobile home they occupied, and had kicked, punched and handcuffed them. Mohammed Nabi Schafie and Noorol Hak Hakimi were hospitalized following the alleged assault on them, the former with multiple bruising, the latter with concussion, a bruised stomach and abrasions. The head of Leipzig criminal police later admitted that: “The [police operation] went badly wrong”. He explained that the police had received a complaint that a woman was being

detained against her will by an armed and potentially dangerous man. In fact the officers had stormed the wrong accommodation.

In the written report of their investigation, the prosecuting authorities stated that the officers had acted lawfully when they burst into the mobile home housing the three asylum-seekers and arrested them with force. (The fact that the officers had got the wrong home was not relevant, according to the authorities.) When the three men inside resisted arrest - believing that they were being attacked by "neo-fascists" - the officers used permissible and proportionate force, which included "firmly taking hold of them, handcuffing them and pushing them to the ground". The injuries to the men resulted from the lawful use of force and were partly a consequence of the cramped conditions in the mobile home. Finally, according to the prosecuting authorities, the suspected officers themselves "denied hitting or kicking [the three asylum-seekers] and denied seeing any of their colleagues acting in such a manner".

In October 1996 Amnesty International expressed concern to the prosecuting authorities about the reasoning behind their decision not to charge any of the officers and asked for clarification on a number of aspects of the investigation. Did the prosecuting authorities seek independent expert medical opinion on the origin of the injuries, with a view to establishing whether they were more consistent with the complainants' allegations that they were deliberately hit and kicked, or with the officers' version of events that they had only "firmly taken hold of the men" and "pushed them to the ground"? Did the prosecutor in charge of the investigation personally interview the suspected officers, as well as any other witnesses, and personally visit the scene of the alleged ill-treatment in accordance with Section 3 (I) of the Guidelines for the Conduct of Criminal Proceedings? Given that the complainants were questioned by the prosecuting authorities on the same day as the alleged incident, why did the investigation take another 10 months before it was concluded?

In January 1997 Amnesty International was informed by the Leipzig prosecuting authorities that it had not demonstrated a "justifiable interest" in receiving information about the investigation. The authorities added that there was "no reason" why they should discuss the points the organization had raised.

The case of M (Brunswick, Lower Saxony): An update (see Appendix II, Ó)

In March 1996 M, a 29-year-old asylum-seeker from Uganda, alleged that he was ill-treated by Brunswick police officers. According to a written complaint he made to the Brunswick prosecuting authorities in April 1996, M had gone to take a shower on the second floor of the asylum hostel where he lives, when he was suddenly attacked by a number of masked men, one of whom grabbed hold of him and slammed him against the wall several times. M was surrounded by several of the masked men - none of whom had said a word to him - and was allegedly struck in the face and on the body. He fell to the ground and was reportedly kicked on the ankle by the same person who had first attacked him. The asylum-seeker, who claims he offered no resistance during the assault on him by what he said he thought was a group of 'neo-Nazis', later learned that the men who had attacked him were police officers participating in a drugs raid on the hostel. Medical certificates showed that M's injuries included multiple bruising to the shoulder, nose, skull and ribs, abrasions to the right knee and right shoulder and an injury to his left ankle. One doctor, who examined M in the early hours of the morning of 14 August 1996, stated that he had to be "virtually carried" into his surgery by two friends.

In August 1996 Amnesty International called upon the authorities of Lower Saxony to carry out a prompt and impartial investigation into M's allegations. In the same month the organization was informed by the Interior Ministry that its letter had been passed on to the Brunswick police authorities. These informed the organization in March 1997 that investigators had concluded that it had been necessary for the officers involved to use a minimum amount of force against M.

Amnesty International later obtained a copy of the full report of the investigation into M's complaint and in April 1997 expressed concern to the Lower Saxony authorities that the investigation may not have been thorough or impartial, in accordance with Article 12 of the Convention against Torture. According to the prosecuting authorities' report of their investigation, a total of four officers, two of whom were suspects in the case and two of whom were witnesses, claimed that M had fled as soon as he saw one of them, ignoring cries of "Stop, police". The first officer to catch up with the asylum-seeker "bumped into him, with the result that M was pressed against the wall". M violently resisted the officer's attempt to arrest him, and the officer therefore had to bring him to the ground, where M continued to hit and kick out. All of the officers denied that M was ill-treated, and all of them claimed that the detainee showed no signs of

injury. Furthermore, according to investigators none of the photographs taken by police after his arrest revealed any signs of injury to the detainee, and there were no traces of blood on his clothes. In assessing the credibility of witness statements, the prosecuting authorities concluded that while the complainant was guilty of exaggeration (for example, he said he had lain handcuffed on the floor for two hours, whereas objectively he could not have been there for longer than 15 minutes), the reliability of the evidence given by the officers was boosted by the fact that the officers involved in the police operation had all come from different stations and therefore did not even all know each other. This, the prosecuting authorities argued, made it unlikely that they were covering up for their colleagues. Taking all the evidence together, the prosecuting authorities concluded that: "The injuries sustained [by M] are therefore the result of [his] actions in resisting arrest". The case against the suspected officers was therefore discontinued due to lack of evidence that a criminal act had been committed.

In its letter to the Lower Saxony authorities in April 1997, Amnesty International asked how the prosecuting authorities explained the apparent contradiction between the evidence given by the officers that the detainee was not injured and the available medical evidence. The organization also asked whether the photographs which were taken of the detainee were detailed enough to reveal the injuries which he suffered to his shoulder, nose, skull, ribs, right knee, right shoulder and left ankle and whether M's clothes were subjected to a forensic examination. Finally, with regard to the prosecuting authorities' assessment that the complainant was guilty of exaggeration, Amnesty International asked the authorities for information on the source of the claim, attributed to M, that he spent two hours handcuffed on the ground, since according to Amnesty International's information M twice stated to investigators (once when interviewed by the police and once during his questioning by a judge) that he had lain on the ground for between 15-30 minutes. Amnesty International had received no response to its letter to the Lower Saxony authorities by the end of April 1997. However, the organization learned in May 1997 that an appeal by M's lawyer against the prosecuting authorities' decision to discontinue the investigation into M's complaint had been rejected the previous month.

From many of the cases which Amnesty International has examined it would appear that in assessing the evidence of a particular case the prosecuting authorities invariably view the testimony presented in favour of the suspected police officer(s) as more credible than that supporting the victim's allegations. The Report of the Committee of Investigation of the Hamburg Parliament into the Hamburg Police shows how wrong prosecuting authorities can be if they automatically assume that statements from police officers must necessarily enjoy a higher degree of credibility than those of complainants. A senior public prosecutor who interviewed 300 officers in connection with allegations of abuses against foreigners told the Committee: "The experiences I had...was that officers - in a way I haven't come across before...[except] with hardened criminals - have quite clearly agreed their statements with each other"(35). The prosecutor added that: "After a certain time it wasn't necessary to ask any more questions because the [officers] brought their prepared answers with them"(36). The Committee concluded that: "If false statements are agreed beforehand...the criminal act being investigated will then often not be able to be proven with the degree of probability necessary for charges to be brought"(37).

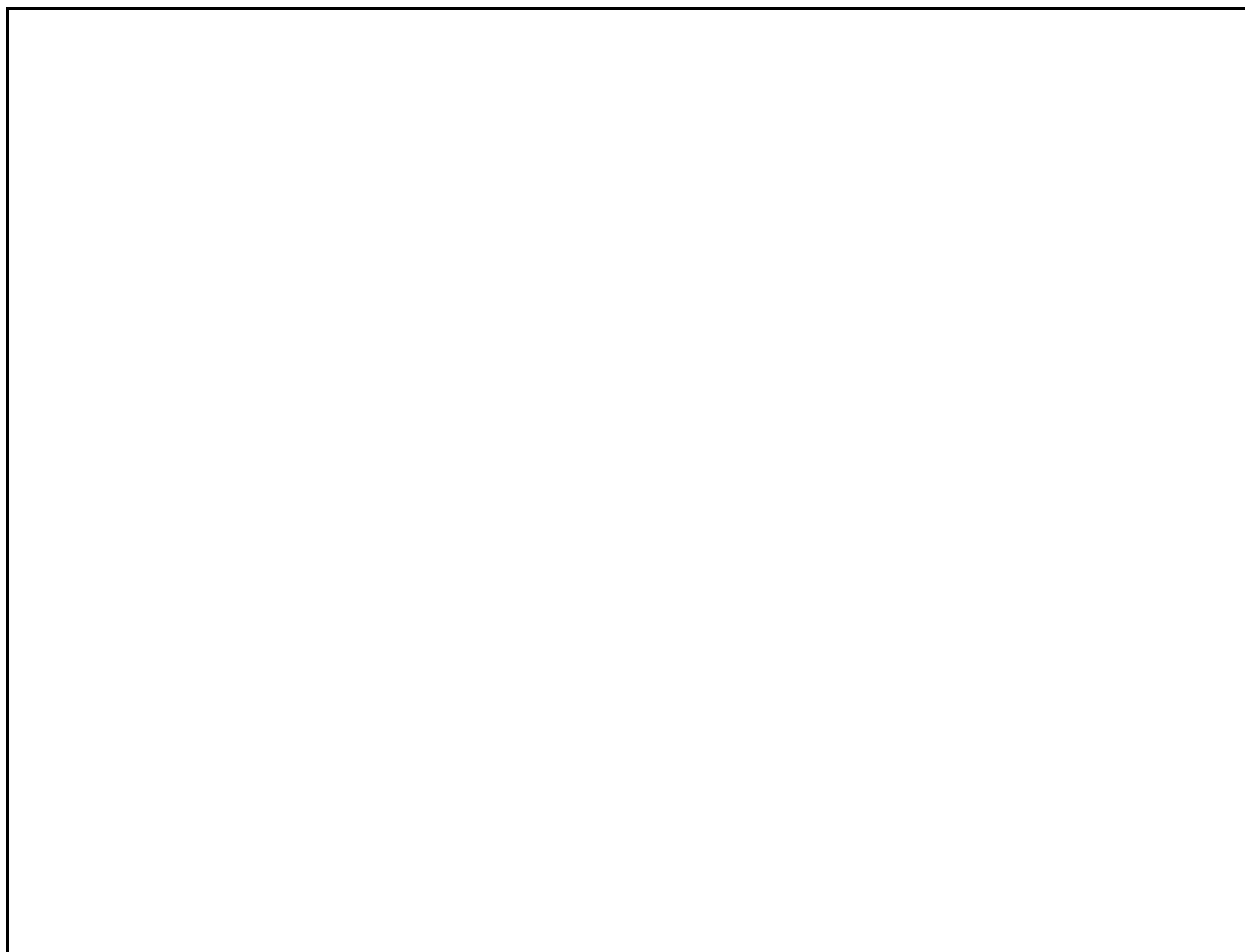
Problems similar to those identified in the Hamburg report have also been described by serving or retired police officers in other cities. Thus, a senior police official in Gießen told a group of young officers undergoing training that "Sometimes officers look away, if a colleague's 'hand slips' or 'a detainee's head is accidentally banged' against a door. Officers who report such incidents are often accused of 'fouling their own nest'"(38). And a retired senior officer told a court which was examining charges of ill-treatment against eight Berlin police officers in October 1996 that "police officers who witnessed criminal acts by their colleagues often suffered from 'amazing gaps in their memory'", while "officers accused of assault often tried to 'talk their way out of it' by alleging that the detainee had resisted them"(39). (In November 1996, seven of the eight accused were acquitted. In announcing the verdict, the Chairman of the Court criticized the fact that important evidence against the officers had been destroyed during internal police investigations and that the police authorities had not handed the allegations over to the prosecuting authorities early enough.)

Amnesty International believes that more cases of alleged ill-treatment would reach the courts than is currently the case(40) if prosecuting authorities: conduct their investigations into alleged police ill-treatment promptly; question personally all witnesses, including all the officers involved, and visit the scene of the alleged ill-treatment; obtain independent expert medical reports on the possible origins of injuries suffered by the complainant and, if appropriate, by the suspected officers; pay special heed in their examination of the amount and type of force used by the officers involved to the principles established in international human rights instruments regarding the use of force by law enforcement officials(41); and treat the incriminating and exonerating evidence equally and impartially; then Amnesty International's belief, first expressed in its May 1995 Report, that courts are better able to assess the available evidence in cases of alleged police ill-treatment is illustrated by the following case.

The case of Ali-Abdulla and Taha Iraki (Berlin): An update (see Appendix II, Ø)

Brothers Ali-Abdulla and Taha Iraki, both German citizens of Lebanese origin, alleged that police officers ill-treated them on the evening of 4 June 1994, after they had accidentally smashed a window of Taha Iraki's car while trying to open the door. According to the brothers, two police officers ran towards them and immediately began to beat Ali-Abdulla Iraki with their batons. They then grabbed him from behind, twisted his right hand, and threw him against another car parked in the street, denting its door. According to the brothers, three more police officers appeared, dragged Taha Iraki by the hair from his car onto the ground and began beating him with their batons. Ali-Abdulla Iraki states that when he tried to protest about his brother's ill-treatment, he was handcuffed and beaten. The police officers also handcuffed Taha Iraki and allegedly continued to hit him as he lay helpless on the ground. He was then reportedly dragged along the ground into the nearby police vehicle. Both brothers allege they were also ill-treated inside the vehicle before being taken to police station 53. The police officers reportedly made no attempt to give any explanation for their arrest or to establish who owned the car with the broken window.

At the police station the two brothers were locked in separate cells. When Ali-Abdulla Iraki asked what was happening, he was allegedly told by two plainclothes officers "We'll fix you our way". (Both men were later accused of



Victim of alleged ill-treatment Taha Iraki (right) and Amnesty International's researcher on Germany, Michael Butler (left), appear in a German television round table discussion. © ZDF

“resisting state authority”.) Half an hour later the brothers were released without any explanation and went directly to the first-aid department of their local hospital for treatment to their injuries. According to medical reports, Ali-Abdulla Iraki's right arm and wrist were put in plaster because of a fracture to his wrist. He had also suffered bruises and abrasions. Taha Iraki had suffered abrasions and cuts to his left shoulder, bruises to his back and grazes to his left elbow. Ali-Abdulla Iraki's wife, Clara, witnessed the beating and arrest of the two brothers. When she protested, an officer reportedly commented that his colleague must have suffered a “blackout”. She also heard the same colleague verbally abuse Taha Iraki as he lay on the ground, calling him a “Turkish bastard”.

In September 1995, more than 15 months after they made their original complaint, Ali-Abdulla and Taha Iraki were informed by the Berlin prosecuting authorities that no charges were to be brought against any of the officers involved in their arrest. In their decision the authorities argued that the evidence given by the complainants and by Clara Iraki had been contradictory or lacking in credibility. The officers had used force - including blows from a baton - in order to break the two brothers' resistance or to defend themselves. Statements from witnesses who said that the officers had used excessive force amounting to ill-treatment did not possess “the degree of certainty necessary to warrant pressing charges”. The same was true of allegations that the officers had racially abused Ali-Abdulla and Taha Iraki. In October 1995 the two brothers appealed against the prosecuting authorities' decision to reject their complaint. Three weeks before learning that their appeal had been dismissed, the two brothers were informed that they themselves had been charged with resisting arrest, assault and with insulting behaviour. (According to the indictment, one officer suffered

abrasions to both arms and to the left hand, and a bite to the little finger of his right hand, while a second officer incurred an injury to his left elbow which had to be put in plaster.)

In February 1996 the trial took place of Taha Iraki. During proceedings the trial judge criticized the “very poor impression” made by the police witnesses, while the public prosecutor described one of the seven officers who testified as the “personification of a bad conscience” and pleaded for Taha Iraki’s acquittal. The court concluded that the officer who arrested Taha Iraki was acting unlawfully, and that the injuries suffered by the detainee were the result of an assault by officers. In commenting on the injuries incurred by the officers, the court ruled that the abrasions suffered by one officer were caused when Taha Iraki attempted to defend himself from assault, while the injury to the second officer’s elbow was caused when the officer banged his arm on the ground. Taha Iraki was acquitted of all charges.

Following the court’s decision, Taha Iraki formally requested, and was granted, a reopening of the investigation into the complaint that he and his brother had made against the officers. However, in May 1996 the prosecuting authorities informed Taha Iraki’s lawyer that “due in part to the considerable amount of time that has elapsed since the incident, it has not been possible to shed full light on the incident even after further investigation”, an ironic statement in view of the fact that the authorities’ own investigation had taken 15 months and that the facts of the case did not fully emerge until the trial of the alleged victim, 21 months after the incident.

In June 1996 Ali-Abdulla Iraki rejected a proposal by the trial judge responsible for his case to drop the charges against him, opting instead to face full trial proceedings as he saw this as his only opportunity to establish his complete innocence. In March 1997 he too was acquitted of all charges.

The case of Ali-Abdulla and Taha Iraki 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.

The German federal authorities have refused to recognize that there are any problems associated with the investigation and prosecution of complaints of police ill-treatment. Thus, in response to Amnesty International’s May 1995 Report, the Federal Minister of Justice was able to assure the organization in June 1995 that: “The prosecuting authorities in the Federal Republic of Germany examine allegations of criminal behaviour by police officers with due care”. Yet only months earlier, in November 1994, a working group set up by the Hamburg Ministry of Justice had criticized 68 out of 118 investigations into alleged police ill-treatment on the grounds that police officers had not conducted their investigations “with the full intensity necessary” or because the prosecuting authorities had not fulfilled their role of directing police investigations actively enough, and in some cases had even “failed to criticize deficiencies in the police’s investigative work”.

Similarly, in October 1995 Amnesty International was told by the Chairwoman of the Standing Conference of Justice Ministers that the recommendations contained in the organization’s May 1995 Report were superfluous, as the principles the organization regarded as essential for the investigation of complaints were already laid down in the Code of Criminal Procedure and in administrative regulations such as the Guidelines for the Conduct of Criminal Proceedings. The Chairwoman thus appeared unaware that Amnesty International had quoted from these verbatim and at length in its report, and that the organization was not criticizing the fact that the principles did not exist, but the fact that public prosecutors too often failed to apply them.

Concern about the complaints mechanisms which exist in Germany for examining allegations of police ill-treatment were also expressed by the Human Rights Committee, which in November 1996 met to consider the Federal Republic of Germany’s fourth periodic report on its compliance with the International Covenant on Civil and Political Rights. On 7 November 1996, the Committee adopted the following observation:

“The Committee expresses its concern that there exist instances of ill-treatment of persons by the police, including foreigners and particularly members of ethnic minorities and asylum-seekers. In this regard, it is concerned that there is no truly independent mechanism for investigating complaints of ill-treatment by the police. The Committee therefore recommends the establishment

of independent bodies throughout the territory of the State Party for the investigation of complaints of ill-treatment by the police".(42)

In March 1997 Amnesty International wrote to the Foreign Minister of the Federal Republic of Germany, requesting information on the steps taken by the Government of the Federal Republic of Germany in order to implement this recommendation of the Human Rights Committee. The organization said that it was interested in learning in particular who had been appointed by the German Government to formulate or coordinate its response to the Committee's recommendation, what brief the appointee had been given, and whether a timetable for acting on the recommendation had been set. Amnesty International had received no substantive reply to its letter by the end of April 1997.

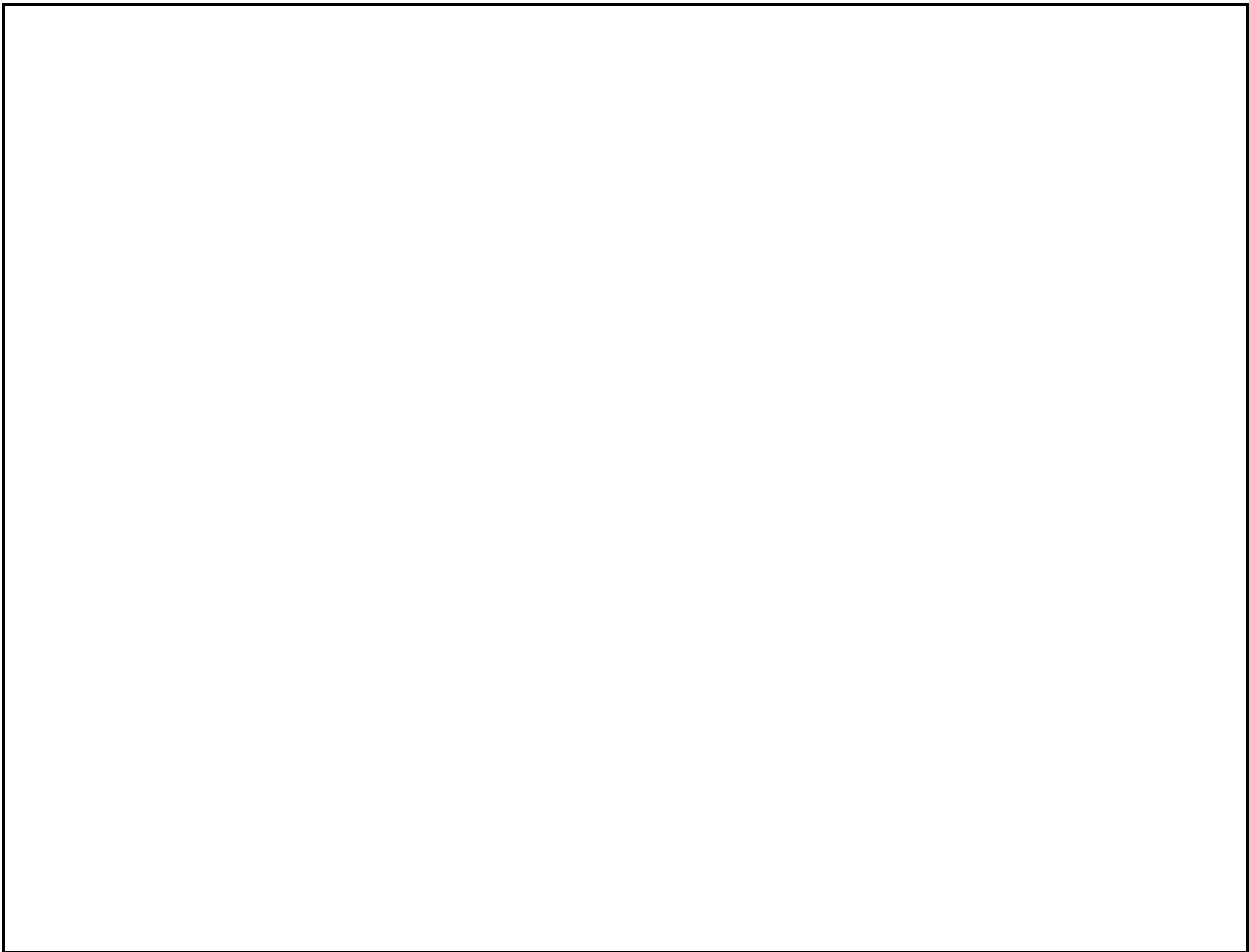
It has not been possible for Amnesty International to assess whether the German authorities have heeded its call for thorough and impartial investigations to be conducted into every case of alleged ill-treatment, and for officers responsible for using excessive force or for deliberately ill-treating detainees in their custody to be brought to justice, as in some cases the authorities have refused to supply the organization with the information it has requested. The following case illustrates this.

The racist attacks on a hostel for asylum-seekers in Rostock (Mecklenburg-West Pomerania): An update (see Appendix II, i)

The racist attacks which took place on an asylum hostel in Rostock-Lichtenhagen over three days in August 1992 became a frightening symbol of the anti-foreigner sentiment and racist violence which erupted in post-unification Germany, while the withdrawal by police during the final night of violence was a vivid example of the widely-perceived failure of the German authorities to provide adequate protection for foreigners. (After evacuating approximately 200 asylum-seekers from the hostel, the police had withdrawn their forces, leaving over 100 Vietnamese workers housed next to the hostel unprotected. Rioters moved in and set fire to the hostel, causing the Vietnamese to flee for their lives onto the roof of the building.)

Amnesty International first wrote to the authorities of Mecklenburg-West Pomerania regarding the alleged failure of police to protect the Vietnamese in August 1992. Its letter to the Interior Minister received no response. A second letter to the Minister of Justice in February 1993 was forwarded to the prosecuting authorities who confirmed to the organization in May 1993 that an investigation was continuing into the actions of two senior police officers. In March 1994 it was reported that two senior police officers had been charged with "arson through negligence". In November 1995, in response to a telephone inquiry from Amnesty International, a spokesperson for the Mecklenburg-West Pomeranian Justice Ministry informed the organization that Rostock Higher Regional Court had rejected the charges against one of the officers. Another court was still examining the charges against the second officer. In August 1996 Amnesty International asked the Rostock prosecuting authorities for information on the outcome of criminal proceedings against the two police officers. In the same month the organization was informed by the Chief Public Prosecutor that its inquiry could not be answered, "not least for reasons of data protection". The Chief Public Prosecutor concluded his letter to Amnesty International by referring the organization to "publications in the regional press" of Mecklenburg-West Pomerania.

In September 1996 Amnesty International expressed concern to the authorities of Mecklenburg-West Pomerania about the apparent reluctance on the part of the Rostock prosecuting authorities to supply the organization with information about the outcome of criminal proceedings against the two officers. Amnesty International also said that it failed to understand how the Rostock prosecuting authorities could justify their refusal to disclose information for



The arson attack on the asylum hostel in Rostock-Lichtenhagen in August 1992 © Nordlicht

reasons of “data protection” and yet, at the same time, refer the organization to press reports which had apparently carried the information the organization had been seeking. Amnesty International had received no response to its letters by the end of April 1997.

In another case which Amnesty International documented in its May 1995 Report, not even the witnesses to an incident of ill-treatment were allowed to receive information about the outcome of the complaint they themselves had made.

A witness's account of police ill-treatment (Berlin): An update (see Appendix II, **Ö**)

On 27 July 1994 Edeltraud and Günter Wochnik wrote to the head of the Berlin police describing an incident they had witnessed eight days previously where police officers roughly pushed a young man, southern European in appearance, into a police vehicle and then hit him several times on the upperbody or face. In their letter they wrote: “It is absolutely incomprehensible to us that someone who has already been arrested and is offering no resistance can be unnecessarily hit in front of six police officers”. A month after they had written, the couple were questioned by the police about what they had seen. Eighteen months later they had still not been informed about the outcome of their complaint, so they wrote again to the police authorities and asked for information about what had happened to it. In the same month they

were informed that: "The Berlin police finished dealing with the matter...on 20 October 1994 and handed it over to the prosecuting authorities", to whom their letter had been passed. In the same month the prosecuting authorities informed Edeltraud and Günter Wochnik that their inquiry about the outcome of their complaint could not be answered because they "...had not shown that they had a...justifiable interest in receiving information".

4 The use of force by police officers

Amnesty International recognizes that the police have a difficult and often dangerous job, and that most encounters between police officers and members of the public do not result in allegations of ill-treatment. Amnesty International also recognizes that police officers are permitted, even obliged, to use force in certain situations. However, the authorities have a responsibility to ensure that deliberate ill-treatment and excessive force which amounts to ill-treatment will not be tolerated under any circumstances.

According to Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials: "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms". Principle 5 states that: "Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall...exercise restraint in such use and...[shall] minimize damage and injury". Finally, the Code of Conduct for Law Enforcement Officials stipulates (in Article 3) that: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".

The principle underlying the use of force by German law enforcement officials is that of proportionality. This principle lies at the heart of all German civil and criminal law and provides that laws, actions and measures of public bodies must not go beyond those strictly required to achieve the legal purpose. The principle of proportionality is, according to a ruling by the German Constitutional Court, enshrined in the constitution itself, and its importance is also reflected clearly in the Police Laws of the *Länder* and in police training policy and programs. (Through such training, officers are taught how to avoid physical confrontation in potentially violent situations, or if the use of force is necessary, how to apply techniques of control and restraint which result in minimum injury both to the detainee and to themselves and their colleagues.)

Amnesty International believes that in many of the cases it has examined since its May 1995 Report, police officers appear to have acted in violation of the above principles and to have used force recklessly or with the deliberate aim of inflicting ill-treatment.

The case of Ahmet Delibas (Hamm, North-Rhine/Westphalia): An update (see Appendix II, Ó)

In October 1995 Ahmet Delibas, who is of Turkish nationality, alleged that police officers from the town of Hamm, in North-Rhine/Westphalia, assaulted him following his arrest outside a discotheque. Ahmet Delibas stated that following a fight outside the discotheque, which he witnessed but had no part in, he was handcuffed and placed in a police car. Inside the vehicle a plainclothes officer sat on one side of him and a uniformed officer on the other. According to Ahmet Delibas, the plainclothes officer took hold of him by the throat with one hand and started to strangle him. Both officers then allegedly punched him repeatedly in the face. Ahmet Delibas was reportedly so dazed by the blows that when the car arrived at the police station he had to be dragged inside. He was later taken to hospital where it was confirmed that he had suffered serious injuries to his face, including a fracture of the left cheekbone, two separate fractures of the left eye-socket and two separate fractures of the right eye-socket. His injuries have necessitated two operations.

On the same day the alleged ill-treatment took place, the Hamm police authority issued a press statement in which it said that two police officers had been attacked and injured when they tried to break up a fight near the "Max" discotheque. The officers recognised one of their attackers and arrested him. The person in question physically resisted their efforts to take him to the police car.

In April 1996 Amnesty International called upon the North-Rhine/Westphalia authorities to conduct a prompt and impartial investigation into the alleged ill-treatment of Ahmet Delibas. In June 1996 the organization was informed by the Interior Ministry that investigations were under way into the allegations made by Ahmet Delibas and into police allegations that Ahmet Delibas had assaulted officers and resisted arrest. In August 1996 two officers were charged with assaulting Ahmet Delibas in the back of the police car in order to “break [the detainee’s] resistance”. The following month Ahmet Delibas was informed by the prosecuting authorities that an investigation into allegations that he had resisted arrest had been discontinued in accordance with section 153 of the Criminal Code (“Non-prosecution in the case of minor matters”). In explaining their decision, the prosecuting authorities argued that Ahmet Delibas “appears from the injuries he has suffered to have been sufficiently punished”. In October 1996 Ahmet Delibas was charged with participating in an attack on a police officer outside the “Max” discotheque.

In January 1997, almost four and a half months after charges were brought against the officers, Dortmund Regional Court finally moved that the case against the officers should go to trial, but only after downgrading the charges from assault to the lesser offence of “assault by negligence”. The trial against the officers, and against Ahmet Delibas, was due to begin in May 1997.

The case of Hidayet Secil (Göppingen, Baden-Württemberg): An update (see Appendix II, ̈)

Nineteen months after he alleged that he was assaulted by Göppingen police officers, Turk Hidayet Secil finally learned that a Göppingen court had issued him with a penal order requiring him to pay a penalty of DM 2,000 (approximately £700) for resisting police officers in the performance of their duty, and for assault. It had taken the court a year to decide on whether to grant the Ulm prosecuting authorities’ application for the penal order to be issued. (Hidayet Secil’s own complaint, that he had been the victim of an assault by police officers, had been rejected in February 1996.) In April 1997 Hidayet Secil appealed against the penal order. The case against him will now go to a full trial.

Hidayet Secil had alleged that in July 1995 one officer punched him four times in the face and another repeatedly struck him with his baton while he was being held by three of the officer’s colleagues in the bathroom of his flat in Göppingen. Hidayet Secil’s injuries included a suspected broken nose, bruising to the upper lip and upper jaw, seven weals on his back and a suspected fracture of the rib. One officer suffered a broken thumb in the incident, another bruising to his arms. A total of at least seven officers had been called to the Secil family flat following a complaint by a neighbour that Hidayet Secil had banged and kicked the door of her flat. Hidayet Secil was arrested and taken to a police station in nearby Eislingen and then to hospital in Göppingen. He was later transferred to Christophsbad Psychiatric Hospital where he remained overnight.

A criminal investigation into allegations that officers had assaulted Hidayet Secil was discontinued in February 1996 and no officers were charged. According to the findings of the investigation, the officers had decided to take Hidayet Secil into custody after they established on arrival at the flat that Hidayet Secil was demonstrating “behavioural peculiarities” and represented a threat to the neighbour. When Hidayet Secil resisted the efforts of one officer to pull him out of the bathroom of his flat by kicking and hitting out at him, the officer punched the complainant several times in the face. A second officer tried to take hold of Hidayet Secil from behind, but was pushed against the bathroom window, causing it to break. The officer cried out: “Watch out, he’s pushing me into the splinters”, whereupon the officer’s colleague “...had no choice but to hit the complainant several times with his baton. The complainant received a total of seven blows on his back”(43). Hidayet Secil was then pushed to the floor where a third officer tried to handcuff him. However, Hidayet Secil made “a turning movement”, as a result of which an officer’s thumb was broken. (Hidayet Secil’s son, Osman Secil, offered an alternative explanation for the injury to the officer’s thumb, claiming that the officer had punched him in the face and that after she had hit him he heard a distinct cracking sound and saw the officer shake her hand. Hidayet Secil himself denied pushing the police officer against the bathroom window and claimed that the window was broken by one of the officers and that he was repeatedly struck by the officer’s baton while he was being held on the floor by the officer’s colleagues.)

In their decision not to charge any of the officers involved, the prosecuting authorities accepted the police version of events, and concluded that the officer who punched Hidayet Secil in the face was acting in “self-defence”, while the officer who struck him seven times with his baton had acted in order to prevent his colleague from being injured. The

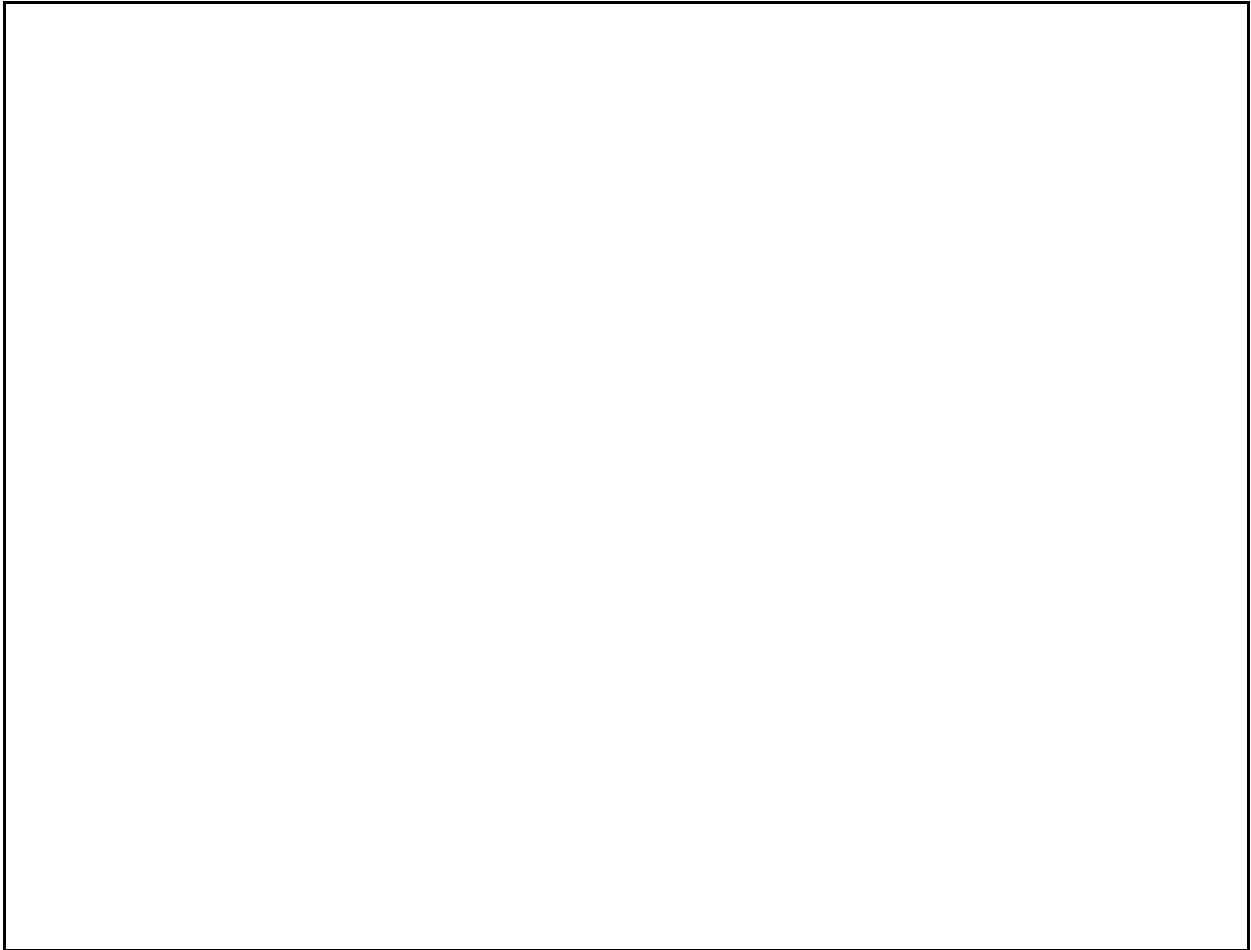
use of force in both cases was not disproportionate and therefore not illegal. Hidayet Secil applied for a judicial review of the prosecuting authorities' decision, but this was rejected on procedural grounds.

In March 1996 Amnesty International expressed concern to the Baden-Württemberg authorities that the investigation into Hidayet Secil's allegations of assault had not been impartial. In particular the organization criticized the prosecuting authorities for: failing to question personally all those people present during the arrest of Hidayet Secil, including all the officers involved, and to visit the scene of the alleged ill-treatment; for failing to obtain an expert medical report on the possible origins of the injury to the thumb of one of the officers and of other injuries suffered by both the complainant and the accused officers; and for failing to treat all witness testimony impartially. Amnesty International also expressed concern that the level and type of force used by the officers involved in restraining and arresting Hidayet Secil was not compatible with international norms. (The fact that Hidayet Secil appeared to be psychologically disturbed and may have been violent does not, in Amnesty International's view, provide a justification for the nature and extent of force used by the officers. Rather, it calls into question the whole approach adopted by the officers in dealing with this very vulnerable person. Amnesty International's concern on this point is heightened by information provided to the organization by the Baden-Württemberg authorities, who informed the organization in March 1996 that in their decision to apply to the courts for Hidayet Secil to be issued with a penal order for resisting police officers and for assault, the prosecuting authorities had taken into consideration a report by psychologists which concluded that Hidayet Secil was suffering from diminished responsibility.) Amnesty International's criticisms of the prosecuting authorities' investigation were rejected by the Baden-Württemberg authorities.

The case of Hidayet Secil 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.

Among the 16 recommendations contained in its May 1995 Report, Amnesty International urged the German authorities to carry out a full review of their service instructions, police training policies and training programs, in order to ensure that they are consistent with international norms and standards of human rights, particularly standards on the use of force by law enforcement officials and the prohibition of torture and ill-treatment. In response to this recommendation, the Federal Minister of the Interior informed Amnesty International in June 1995 that: "In the two and a half year period of basic training which German police officers undergo, they receive intensive instruction on the principles of the legality of administrative acts and on the protection of human rights. The legally permissible use of direct force, for example the use of physical force or of weapons by law enforcement officials is a central theme here". Also, the Chair of the IMK assured Amnesty International in August 1995 that "I and my colleagues in the other *Länder* are unanimous in believing that [Amnesty International's] recommendations are already largely realised in practice". Amnesty International has also been informed by German authorities that courses on conflict management are standard components of police training programs.

In June 1995 Amnesty International informed the Federal Minister of the Interior that it was aware that training of the sort he had described in his letter of June 1995 existed; indeed, the organization had referred to it in its report. The organization's main concern, however, was that existing training programs had not proven adequate to prevent ill-treatment. Amnesty International therefore believed that for this reason a review of the service instructions, police training policies and training programs was necessary. In making its recommendation, Amnesty International referred the Hamburg authorities' action in conducting a review of the training which Hamburg officers receive in techniques of self-defence and physical restraint, following a police operation in May 1994 which resulted in the serious injury of journalist Oliver Neß.



Oliver Neß being brought violently to the ground by police in May 1994. Two police officers were subsequently fined for their part in this incident © K von Appen

The case of Oliver Neß (Hamburg) : An update (see Appendix II, Ó)

In May and June 1996 the trial took place of two Hamburg police officers charged with assaulting journalist Oliver Neß at a demonstration he was reporting on in May 1994. Oliver Neß alleged that officers hit him repeatedly in the kidneys, pelvis and chest with their batons and deliberately and violently rotated his foot at the ankle while he was on the ground. He was still receiving medical treatment for his injuries, which included multiple bruises and abrasions and torn ankle ligaments, two years after the incident. In its findings the court rejected claims by one of the accused officers that Oliver Neß had been an “agitator” at the demonstration, and established that the officer had threatened the journalist and violently brought him to the ground in order to “teach a lesson” to demonstrators. The court found the other officer guilty of causing bodily harm to Oliver Neß through negligence as a result of his actions in twisting the detainee’s foot in an effort to turn him over on to his back while he was on the ground. The court was unable to attribute any of Oliver Neß’s other injuries to the actions of either officer. The two officers were fined DM 3,200 (approximately £1,140) and DM 4,800 (approximately £1,700) respectively. In December 1996 the Hamburg authorities awarded Oliver Neß compensation for the injuries he had suffered.

Following its review of the training which Hamburg officers receive in techniques of self-defence and physical restraint, the Hamburg authorities ordered that "certain techniques used to hold or restrain people [should be] no longer taught or used(44). The authorities also emphasized that "bringing someone to the ground" when arresting them should not be used as a "standard technique but only as the individual circumstances of the situation require"(45).

The need for precise regulations and instructions regarding the use of force to control or restrain detainees, and for a regular review of these, was illustrated most clearly in the recent tragic case of Kola Bankole.

The death in custody of Kola Bankole (Frankfurt am Main, Hesse): An update (see Appendix II, i)

Nigerian Kola Bankole died in August 1994 after being bound and gagged and injected with a sedative when he physically resisted attempts by officers of the Federal Border Protection Police (*Bundesgrenzschutz* or BGS) to deport him from Frankfurt am Main airport.

Officers of the Rheinland-Palatinate police force had taken rejected asylum-seeker Kola Bankole from Zweibrücken prison to Frankfurt am Main airport on the morning of 30 August 1994. Because the detainee had physically resisted several previous attempts to deport him, plastic restraints had been attached to his knees and feet, and the lower parts of his arms had been fixed to the upper parts of his thighs. At the airport Kola Bankole reportedly tried to bite officers when they tried to inspect his mouth for hidden objects and told them that he had AIDS and that he would kill them. The BGS officers therefore placed a gag over the detainee's mouth for a few minutes, during which time they were able to put steel restraints on the detainee's hands.

Accompanied by a doctor, BGS officers took Kola Bankole on board the aircraft which was to return him to Nigeria.

The Nigerian resisted attempts by the officers to place him in his seat, and strips of velcro were put around his feet and a belt around his upper body in an attempt to restrain him. When the detainee began to move his head violently and tried to bite the officers, one of them decided to gag him again. The gag was a device one of the officers had himself made, made from socks and the belt from a window blind. Still Kola Bankole forcibly resisted the officers' efforts. At this point the doctor, who up until now had been observing the efforts of the officers, took out of his bag a pre-prepared sedative and gave Kola Bankole an intra-muscular injection in the shoulder. Immediately after he was injected, Kola Bankole gave up all resistance. The doctor checked his pulse and told the officers that "Bankole may have put himself into a trance, which Nigerians are particularly good at doing"(46). Ten to 15 minutes after administering the injection, the doctor was unable to obtain any response from Kola Bankole and an ambulance was called. (By this time the gag around Kola Bankole's mouth had been loosened.) Two medics arrived with ECG equipment. The ECG reading indicated that Kola Bankole had died. An autopsy later revealed heart failure as the cause of death. The autopsy established that Kola Bankole had suffered from an underlying heart condition.

An investigation was launched into Kola Bankole's death by the Frankfurt prosecuting authorities. In their examination of the actions of the officers, the prosecuting authorities paid particular attention to the use by the officers of a gag and chest belt in restraining Kola Bankole, as these had, according to medical evidence, inhibited Kola Bankole's breathing. After taking evidence from four medical experts, the prosecuting authorities concluded that:

"None of the experts puts forward the theory that the measures taken by the accused which hindered Bankole's breathing (use of the chest belt and gag) were, with a degree of probability bordering on certainty, the sole cause of death. It cannot therefore be said with the degree of certainty necessary that Bankole would still be alive today if the accused had not applied the gag and belt"(47).

Charges of manslaughter through negligence could not therefore be brought against any of the officers concerned.

In examining the separate question of whether, in applying the gag and chest belt, the officers had been guilty of causing bodily harm to Kola Bankole, the prosecuting authorities concluded that the use of physical force and of restraints was sanctioned in law; the central question was therefore whether the amount of force was proportionate. On this latter point the authorities concluded that, in view of Kola Bankole's efforts to resist his deportation through force, including his attempts to strike the police officers present with his head and to bite them, the officers were justified in applying the

level of force they did. They could not foresee the consequences of their actions on the detainee's health because they had no knowledge of his heart complaint.

In November 1995 lawyers representing Kola Bankole's family appealed against the decision of the prosecuting authorities not to charge the BGS officers involved in the deportation attempt. Their appeal was rejected in December 1995.

In November 1995 the doctor involved in the attempted deportation was charged under section 323 (c) of the Criminal Code with "failing to render assistance" to Kola Bankole, an offence punishable by a fine or by up to a maximum of one year's imprisonment. According to the charges, the doctor should have released the detainee from his restraints and tried to resuscitate him, instead of telephoning for an ambulance and waiting for ECG equipment to arrive. At his trial, which did not begin until January 1997, the doctor admitted that he had failed in his duty to protect Kola Bankole. In February 1997 the trial judge halted proceedings in accordance with Section 153 (a) (2) of the Code of Criminal Procedure(48) and ordered the doctor to pay DM 5,000 (approximately £1,780) to a charitable organization. In explaining its decision, the court reportedly stated that it would be "unjust" if only the doctor were to be convicted in connection with the death of Kola Bankole, since it is the BGS which is responsible for the deportation of asylum seekers.

Amnesty International first raised the case of Kola Bankole with the German authorities in September 1994. In its letter to the Federal Minister of the Interior, the organization urged that the investigation into Kola Bankole's death be given the widest possible mandate, in order that it could examine not only the full circumstances surrounding the detainee's death, but also broader questions concerning the role of law enforcement officers and medical personnel in cases of forcible deportation. Amnesty International also asked a number of specific questions regarding deportation procedures; however, it received no reply from the minister and therefore wrote to him again in June 1995. In August 1995 the organization received a two-sentence reply from the Interior Ministry, informing it that it was not possible for it to comment on the case, as the criminal investigation into the death of Kola Bankole was still in progress.

In April 1996, several months after the prosecuting authorities' decision to charge the doctor, but none of the police officers, in connection with Kola Bankole's death, Amnesty International wrote to the Federal Minister of the Interior again, expressing concern that neither the criminal investigation into the actions of the officers and the doctor, nor any separate review or inquiry, had addressed the wider questions relating to the role of police officials and of medical personnel in cases of forcible deportation. The organization urged that such an inquiry be opened and suggested a number of questions which the inquiry should address. In its reply to Amnesty International's letter in May 1996, the Federal Ministry of the Interior failed to respond to Amnesty International's recommendation for an inquiry, and provided only scant information on the specific questions which the organization suggested such an inquiry should examine. These questions, together with a summary of the ministry's replies(49) (in italics) and Amnesty International's comments on these, are detailed below:

(1) How often and for what reasons are sedatives administered to deportees? Are doctors issued with any guidelines on the use of sedatives and on the possible increased risks associated with this procedure in cases where detainees are already heavily restrained? (*No response*)

(2) Which legal provisions, decrees or guidelines specify the forms of force or restraint which members of the BGS are allowed to use under the Law on the Use of Direct Force? Do these forms of restraint include improvised or home-made devices, such as the gag applied by officers in the case of Kola Bankole? *The law does not define what sort of means of restraint are to be employed. Regulations specify, however, that officers are to use "the restraints they are issued with", or, if these are not available "other suitable means of restraint", provided the use of these is not "disproportionate". BGS officers are issued with no standard gag, and therefore had to resort to making their own.* (At the trial of the doctor, one officer

regularly involved with deportations stated that in addition to the standard restraints issued to BGS officers, such as plastic and steel handcuffs and velcro strips, he routinely carried with him his own equipment, including window blind or car seat belts, socks and parcel tape. He did not know, the officer said, whether his superiors were aware of his actions.)

(3) Have the authorities conducted or commissioned any tests into potential dangers associated with the use of gags? *“There is no evidence that the gag used in the case of Kola Bankole...represented a suffocation risk”*. (This last statement by the Federal Ministry of the Interior would appear to be in contradiction of the evidence given by two of the medical experts who were consulted by the Frankfurt prosecuting authorities, both of whom concluded that the use of the chest belt and gag was the “decisive factor” in the death of Kola Bankole. Indeed, at the trial of the doctor one of the experts told the court that he had carried out an experiment on himself, using a gag similar to the one placed on Kola Bankole. After five minutes he had to discontinue the experiment because of lack of oxygen. In the doctor’s view the use of the other restraints, in particular the chest belt, coupled with Kola Bankole’s exertions in resisting would have compounded his breathing problems.)

(4) Are officers of the BGS, or other persons who are charged with assisting in deportations, provided with any special training or issued with any service instructions or guidelines on how to deal with deportees who physically resist attempts to forcibly deport them? Have any changes been made to this training, or to these instructions or guidelines, since the death of Kola Bankole? *“Officers of the BGS who are responsible for deporting foreigners are provided with special training.” Since 11 November 1994 BGS officers are prohibited from using any means of force or restraint which involves blocking or closing a deportee’s mouth.* (The information given by the Minister is contradicted by the testimony of at least three BGS officers who gave evidence at the trial of the doctor in January and February 1997, all of whom stated that, as far as they were aware, there was no prohibition on the use of gags. One of the officers even confirmed that he personally continued to gag deportees. A fourth officer contradicted his three colleagues and confirmed that the use of gags was now prohibited, adding in his statement to the court that in revealing this information he was in breach of service regulations and could now face disciplinary sanctions.(50))

Finally, Amnesty International asked the Federal Minister of the Interior for copies of any provisions, guidelines, decrees, training or service instructions referred to under questions (1), (2) and (4). None have been provided.

The information supplied by the Federal Ministry of the Interior has failed to convince Amnesty International that safeguards are now in place which will in future prevent forcible deportations from being carried out in a cruel, inhuman or degrading manner that could threaten deportees’ safety and possibly lead to another death in police custody. Amnesty International remains particularly concerned about the apparent lack of appreciation by the authorities of the potential medical risks associated with the administration of sedatives to deportees heavily restrained, and about the methods of authorization and usage of restraint equipment used in forcible deportations.

The Government of the Federal Republic of Germany is responsible for ensuring that deportations are carried out - in accordance with international standards - in a manner which respects the human rights of the individual being deported. **Amnesty International believes that the death of Kola Bankole highlights the need, first identified by the organization in September 1994, for a full and impartial independent inquiry by the German authorities into the role and accountability of all agencies involved in the deportation process. The results of this inquiry should be published.**

Amnesty International's conclusion that existing training programs have not proven adequate to prevent police abuses appears to be shared by the Hamburg PUA, which concluded in its report that officers received inadequate training to improve their "social competence...for example the way in which they dealt with conflict situations or with minorities"(51). Participation in training courses in these areas was, according to the PUA "not obligatory, in contrast to courses in self-defence. In May 1995 only about a third of Hamburg law enforcement officers had participated in conflict management courses"(52).

Similar concerns were expressed by the authors of the report "*Police and Foreigners*", who again stressed the need for improvements in police training, specifically in the areas of stress and conflict management and anti-discrimination training. (Although the Chairman of the IMK emphasised, when presenting the results of the report, that many individual *Länder* had already introduced such improvements, he also commented

that the relevant body of the IMK would be addressing the issue of training.)

The need for improvements in the broader area of human rights training was also emphasised by the Human Rights Committee, which in November 1996 adopted the following observation after its consideration of the Federal Republic of Germany's fourth periodic report on its compliance with the ICCPR:

"Though the Committee finds that programmes of...training of police officers concerning racism, anti-Semitism and xenophobic attitudes have been started, it regrets that a broader...training programme in human rights values does not appear to have received the same level of support...The Committee thus recommends that efforts to...train the police that racism and xenophobia are violative of basic human dignity, contrary to fundamental values and constitutionally and legally impermissible, should be intensified and urges that such...training should be placed in the wider context of human rights...training. The Committee urges the federal and *Länder* governments to introduce courses in human rights in...police and defence academies with a view to strengthening a culture of human rights".(53)

Amnesty International believes that it is essential for the 16 *Länder* and federal police authorities to adopt a concerted, unified approach to correcting deficiencies in police training policy and programs. The organization believes that the recommendations made by both the Human Rights Committee, and by the authors of the "*Police and Foreigners*" report, represent a useful framework for action, and in March 1997 Amnesty International wrote to the Chairman of the IMK asking for details about the authorities' response to both of these. Specifically the organization asked: who are the members of the IMK body responsible for examining the issue of training; what brief were they given, and what resources were they allocated in order to carry out their brief; what progress has been made by this body in the 12 months that have elapsed since publication of the report; what new training initiatives have been developed and implemented by the *Länder* since publication of the report "*Police and Foreigners*"; what supra-regional mechanisms exist for coordinating and monitoring existing and new training initiatives by the individual *Länder*; and what has been the response of the IMK to the recommendations of the Human Rights Committee?

In April 1997 the Chairman of the IMK informed Amnesty International that its letter had been passed on to the relevant working group.

4.1 Disciplinary investigations

In its May 1995 report Amnesty International concluded that not only are the chances extremely small that a police officer who is alleged to have ill-treated a detainee will be charged, it is also unlikely that the same officer will face disciplinary sanctions.

Preliminary disciplinary proceedings into allegations of ill-treatment are normally opened at the same time as the criminal investigation into the same allegations, but are suspended until the latter is complete. From many of the cases which Amnesty International has examined, it would appear that once a criminal complaint has been rejected, the authorities automatically close the preliminary disciplinary proceedings without moving on to a full examination of the facts. Yet in many cases the criminal complaint examined by the prosecuting authorities may contain allegations which amount to breaches of police service instructions or internal police regulations rather than criminal offences. A complainant may allege, for example, that he/she was refused permission to notify a relative of his/her arrest and detention or to make a formal complaint about his/her ill-treatment at the police station at which he/she was detained. An examination of the incident by police authorities may also reveal that the officers used inappropriate techniques of restraint, or failed to apply training instructions which would require them to look for ways of de-escalating a potentially violent situation.

Information supplied to Amnesty International by German authorities appears to substantiate the organization's concerns in this area. Thus, for example, an official of the Hesse Ministry of the Interior wrote to Amnesty International in April 1995 that Mimoun T.'s complaint that he had been ill-treated in October 1992(54) had been rejected by the prosecuting authorities and that: "I therefore see no reason to take disciplinary measures against the officer involved". Similarly, in March 1997 the Brunswick police authorities informed Amnesty International that the prosecuting authorities' had rejected M's complaint of ill-treatment (see pages 22-3) and that: "Further investigations, in particular of a disciplinary nature...are therefore ruled out".

Amnesty International's concern about the inadequacy of disciplinary investigations also seems to be shared by the authors of the Report of the Committee of Investigation of the Hamburg Parliament into the Hamburg Police, who examined a total of 1,337 complaints against Hamburg police officers. The PUA found that in 1,200 of these cases, the only evidence of any disciplinary examination of the complaints had been a "meaningless" one-page form which was filed after rejection of the criminal complaint by the prosecuting authorities and which contained the phrase "no need for disciplinary investigation" or "no further measures necessary".

In the light of its concern regarding the ineffectiveness of disciplinary investigations, Amnesty International called upon the German authorities in its May 1995 report to ensure that full, impartial and effective disciplinary investigations are conducted into all complaints of police ill-treatment where there is *prima facie* evidence that police officers have ill-treated detainees in their custody. Concerned that police authorities appeared to use the rejection of a criminal complaint as justification for not carrying out any disciplinary investigation, Amnesty International added that disciplinary investigations should not be bound by the findings of any criminal investigation. This was rejected by the Chairman of the German Union of Police Officers, who stated in a letter to the organization in December 1995 that: "In law the findings of any criminal investigation must be binding for the disciplinary proceedings". In support of his statement, the Chairman quoted section 18, paragraph one of the Federal Disciplinary Regulations. However, this paragraph refers not to the findings of criminal investigations, but to those of courts. Since most complaints never reach a court, but are dismissed by the prosecuting authorities, the law which should be applied with regard to disciplinary proceedings is, in fact, paragraph two of section 18 of the Federal Disciplinary Regulations, not paragraph one. Paragraph two clearly states that: "The findings of any other legally regulated proceedings" -

and this would include criminal investigations carried out by prosecuting authorities which are discontinued without charges being brought - "are not binding".

Amnesty International therefore repeats the recommendation made in its May 1995 Report.

5 Conclusions and recommendations

In its May 1995 Report Amnesty International urged the German authorities to demonstrate unambiguously their commitment to implementing Germany's obligations under human rights treaties it has ratified, as well as under other international human rights instruments, to take effective steps to end torture and ill-treatment by adopting a total of 16 recommendations. Amnesty International has been disappointed by the authorities responses to its report.⁽⁵⁵⁾ At the same time it has continued to receive numerous fresh allegations of police ill-treatment, while further evidence of police abuses has also been revealed by the study of "Police and Foreigners", commissioned by the Standing Conference of Interior Ministers of the *Länder*, and by the Committee of Inquiry set up by Hamburg Parliament. Finally, the Human Rights Committee has expressed concern about allegations of ill-treatment and has made a number of recommendations in this area.

In the light of these developments, Amnesty International believes that the German authorities need to re-examine their response to the problem of alleged police ill-treatment. As part of this response, Amnesty International recommends that the authorities establish additional mechanisms to those already in place for examining and responding to alleged police ill-treatment. **It therefore urges the federal and *Länder* governments to establish, in accordance with international standards, such as the UN Principles Relating to the Status of National Institutions⁽⁵⁶⁾, permanent, independent oversight bodies which should:**

- **maintain uniform and comprehensive statistics on complaints about ill-treatment by officers. These figures should include information on the number of complaints of ill-treatment made against police officers over a specified period of time, the steps taken in response to each complaint and the outcome of any criminal and disciplinary investigations conducted into alleged police ill-treatment;**

- **be empowered to conduct their own investigations into such complaints, and to recommend whether in individual cases criminal and/or disciplinary charges should be brought against any of the officers involved, and whether compensation should be awarded to any of the complainants;**

- **perform a continuous assessment of the measures adopted by the police authorities to prevent the use of excessive force or deliberate ill-treatment.**

The work of these bodies should be made public.

Amnesty International also urges the German authorities to implement the other recommendations made in its May 1995 Report (see Appendix III), as well as those of the Human Rights Committee.

Appendix I: Further cases of police ill-treatment that allegedly occurred in or before 1994

- In October 1995 a **Berlin** court sentenced three officers to between seven and 10 months' imprisonment (suspended) for ill-treating a Vietnamese detainee in their custody. According to the court's ruling, the officers had taken the detainee into a wooded area of the city where they beat him, spat at him and sprayed him with irritant gas. The incident happened in **April 1994**. (*Frankfurter Rundschau*, 4 October 1995.)
- In December 1995 a **Marburg**(57) police officer was fined DM 7,500 for breaking a detainee's nose in **August 1994**. A number of police witnesses at first unanimously maintained that the detainee had fallen down some stairs. Four months after the incident a trainee officer confirmed the detainee's version of events: an officer had hit the detainee in the face with his radio while the detainee's hands were handcuffed behind his back. In court the accused officer maintained he had fallen over the detainee and accidentally struck him in the face. The officer was found guilty of assault by negligence. (*Frankfurter Rundschau*, 21 December 1995.)
- In April 1996, in what later became known as the "rags affair", it was alleged that **for a period of several years up until the summer of 1994 Berlin** police officers had subjected Romanian pre-expulsion deportees to cruel, inhuman and degrading treatment by giving them little more than rags to wear in detention.

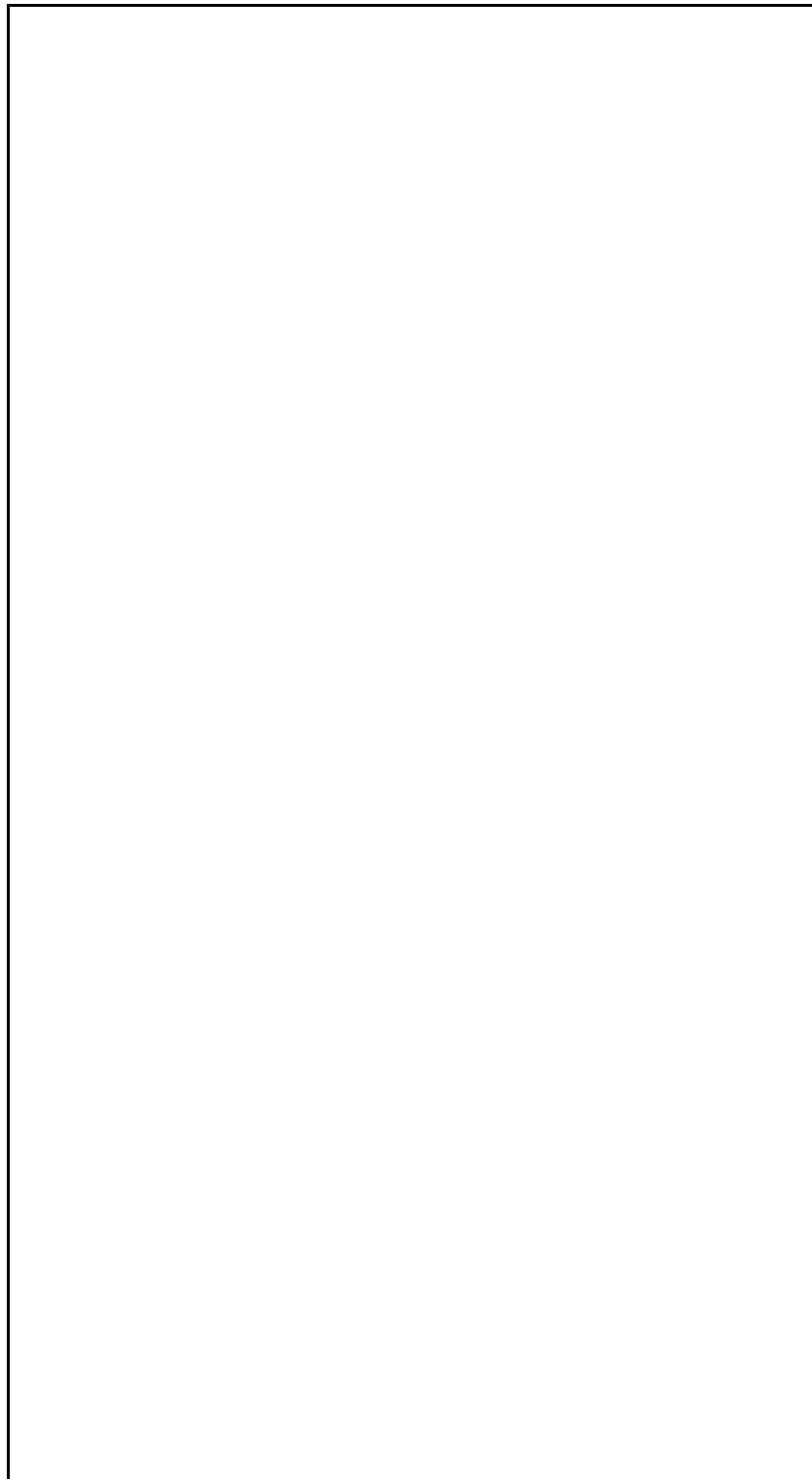
The "Rags Affair" (Berlin)

The "rags affair" was brought to light by the German television current affairs programme *Panorama* which had been given photographs of Berlin detainees by recently retired police officer Wolfram Polewczynski. The photographs, made for official police records, revealed that instead of being able to wear their own clothing, as was normal in pre-expulsion detention, the Romanian detainees - male and female - were given only second-hand police tracksuits, from which the pockets and zips had been removed to leave gaping holes. Many of the detainees did not even have any underwear on underneath the tracksuits. The official explanation given by the police authorities for the practice was that Romanian detainees had tried to injure themselves with the zips in the tracksuits, or with objects, such as razor blades, concealed in the pockets.

Officer Polewczynski repeatedly fought to obtain improvements to the detainees' clothing, without success. Even when in 1991 the head of the Berlin police ordered his officers to make sure that in future detainees were given suitable clothing, the situation did not change. (The Police President's attention had been drawn to the matter following reports that a judge had ordered the release of a Romanian detainee from detention after he had appeared before him inadequately dressed. The judge ruled that it would be a disproportionate measure to continue to detain the man in such unacceptable conditions. As a result of his action, the judge was formally investigated by the prosecuting authorities for "perverting the course of justice". However, he was deemed to have acted in error and without intent, and was not charged.)

In March 1994 Officer Polewczynski was informed that he was the subject of a disciplinary investigation following a number of incidents where he had allegedly clashed with fellow officers. One of the disciplinary offences he was accused of committing was that of reporting to the Jewish Community in Berlin on the poor conditions, including inadequate clothing, which detainees had to put up with. However, the police authorities viewed positively the fact that Officer Polewczynski had not "gone public" in a more visible way, and in January 1995 he was informed that no disciplinary action would be taken against him.

The practice of dressing Romanian detainees in "rags" was ended in the summer of 1994 when a senior official in the Interior Ministry reportedly ordered an immediate stop to it. At the end of March 1996, Officer Polewczynski retired from the Berlin police force. Two weeks later *Panorama*



The "rags affair": Romanian detainees being made to wear discarded Berlin police tracksuits from which the pockets and zips had been removed © DPA

carried the story of the “rags affair”. The following day Officer Polewczynski was made the subject of a criminal investigation into allegations that he had stolen police photographs. (The investigation was discontinued in September 1996.)

- In August 1996 an officer of the **Federal Border Protection Police** was fined DM 11,000 for assaulting a 24-year-old Egyptian law student at **Frankfurt** railway station following a routine identity check. The incident took place in **January 1994**. (*Frankfurter Rundschau*, 22 August 1996.)

Appendix II: List of recent Amnesty International publications containing detailed descriptions of cases of alleged ill-treatment by German police officers

î *Federal Republic of Germany: The alleged ill-treatment of foreigners - a summary of recent concerns*, published in June 1993, AI Index: EUR 23/03/93.

í *Federal Republic of Germany: Police ill-treatment of detainees in Hamburg*, published in January 1994, AI Index: EUR 23/01/94.

î *Federal Republic of Germany: The alleged ill-treatment of foreigners - a summary of concerns in the period June - December 1993*, published in February 1994, AI Index: EUR 23/02/94.

ï *Federal Republic of Germany: A summary of concerns in the period May - October 1994*, published in November 1994, AI Index: EUR 23/08/94.

ð *Federal Republic of Germany: Failed by the system - police ill-treatment of foreigners*, published in May 1995, AI Index: EUR 23/06/95.

ñ *The alleged ill-treatment of foreigners - An update to the May 1995 report*, published in February 1996, AI Index: EUR 23/02/96.

Amnesty International’s biannual publication “Concerns in Europe” and its annual Amnesty International Report also contain new cases, updates of cases previously documented, or summaries of the organization’s concerns. Of these particular reference is made in this document to:

ò *Amnesty International - Concerns in Europe: January - June 1996*, published in August 1996, AI Index: EUR 01/02/96.

ó *Amnesty International - Concerns in Europe: July - December 1996*, published in March 1997, AI Index: EUR 01/01/97.

Appendix III: Amnesty International’s recommendations from its May 1995 Report

The investigation and prosecution of allegations of police ill-treatment

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

! The prosecuting authorities should themselves interview the complainant, the suspected police officers and any other witnesses and, where appropriate, should examine the scene of the alleged ill-treatment.

! All allegations of police ill-treatment should be investigated by the prosecuting authorities promptly, impartially and thoroughly. In their investigations public prosecutors should pay special heed to the principles established in German law and in international human rights instruments regarding the use of force by law enforcement officials. If a criminal investigation establishes that the allegations of the complainant are credible, it should be left to a court to assess the veracity of conflicting or contradictory testimony.

! The German authorities should take effective measures to ensure that people who bring complaints of ill-treatment against police officers are protected against intimidation. Such measures should include the careful scrutiny by the prosecuting authorities of police complaints that detainees have resisted state authority, particularly those which are filed only after complaints of police ill-treatment are brought. Where complaints are filed simultaneously by a detainee alleging police ill-treatment and by police officers alleging resistance to state authority, the complaint against the alleged victim should be suspended until the result of the investigation into the behaviour of the police officers concerned has been completed.

The role and responsibility of the police

! The federal and *Länder* police authorities should carry out a full review of their service instructions and training programs to ensure that they are consistent with the obligations laid down by the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Code of Conduct for Law Enforcement Officials.

! Full, impartial and effective disciplinary investigations should be conducted into all complaints of police ill-treatment where there is *prima facie* evidence that police officers have ill-treated detainees in their custody. Such disciplinary investigations should not be bound by the findings of any criminal investigation. They should examine all aspects concerning the treatment of the detainee in question, including allegations that detainees have been subjected to excessive force or deliberate ill-treatment or have been denied rights guaranteed in international treaties to which Germany is a party or in German law. Officers found to have infringed legal provisions, service instructions or internal police regulations on the treatment of detainees should be subject to disciplinary sanctions.

! Law enforcement officers against whom repeated complaints of ill-treatment are filed should be transferred, without prejudice, to duties not directly related to arresting, guarding or interrogating detainees. Officers charged with an offence involving the commission of torture or ill-treatment should be immediately and automatically suspended from such duties pending the court's decision.

! Police training policies and programs should be reviewed in order to ensure that education in the international norms and standards of human rights, particularly standards on the prohibition of torture and ill-treatment without distinction of any kind, including race, colour, sex, language, religion and national or social origin, are adequately and clearly represented.

The rights of detainees and the obligations of police officers towards detainees in police custody

! At the outset of their detention people taken into police custody should be given a form outlining their legal rights. This form should be available in different languages. The detainee should certify that he has been informed of his rights.

! The right of detainees to be promptly informed in a language they understand of the reason for their arrest or detention should be respected.

! Police officers should adhere to their service instructions which require them to clearly identify themselves to members of the public when carrying out their duties, unless there are concrete and justifiable reasons for them not to do so.

! The federal and *Länder* police authorities should examine seriously whether all uniformed officers should be required to wear some form of personal identification on their uniforms, for example their service number or their name.

! Any detainee requesting medical assistance at a place of detention should be provided with the services of a doctor immediately.

! The right of detainees to inform a relative or person of their own choice of their detention should be respected.

! The right of detainees to make a complaint about their treatment in detention should be respected.

! A clear and comprehensive record should be kept of the period which any detainee spends in custody. This record should include details of: the time and reason for detention; any signs of injury exhibited by the detainee; requests by the detainee for medical assistance and the action taken in response to such requests; requests by the detainee to contact a relative or other person of his/her choice, including a lawyer, and the action taken in response to such requests; any complaints made by the detainee about his/her treatment, and the action taken in response to these complaints; when the detainee was informed about his/her rights while in detention. The lawyer of the detainee should have full access to such a custody record.

(1) Germany is made up of 16 regional states, or *Länder*. These are: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North-Rhine/Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia. Each Land has its own elected parliament and government. The Minister of Justice in each Land government is responsible for the administration of justice within the territory of that *Land*, and the Minister of Internal Affairs for the police. The Federal Minister of the Interior is responsible for the Federal Border Protection Police.

(2) The Federal Minister of the Interior in a letter to Amnesty International in June 1995.

(3) Statement by the Internal Affairs Committee of the German Parliament in June 1995.

(4) "*Police and Foreigners*", page 146.

(5) See Amnesty International's May 1995 Report, pages 31-3.

(6) According to section 407 of the German Code of Criminal Procedure, the prosecuting authorities can apply to a court for a penal order to be issued if "the results of [their] investigations suggest that court proceedings are not necessary". If the court grants the order, the accused can either accept it or, by appealing against it, opt instead for a full trial. A penal order can only be issued in the case of misdemeanours, that is criminal acts for which the minimum penalty is less than one year's imprisonment, or a fine.

(7) Report of the PUA, pages 1,109 and 1,112.

(8) Report of the PUA, page 1,110.

(9) Report of the PUA, page 1,109.

(10) Magazine of the German Police Officers' Union, issue 12/96, page 17.

(11) Report of the PUA, page 1,109.

(12) Report of the PUA page 1,110.

(13) In March 1997 Amnesty International asked the Hamburg authorities whether the judgment in this case had entered into force. By the end of April 1997 the organization had received no substantive reply to its letter.

(14) The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment is also recognized in Article 5 of the Universal Declaration of Human Rights and is enshrined in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Acts of torture and cruel, inhuman or degrading treatment or punishment are also prohibited by German constitutional and criminal law. Article 1 (1) of the German Constitution or Basic Law

states that: "The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority". According to Article 2 (2): "Everyone shall have the right to life and to inviolability of their person". For persons in official custody the protection afforded by Article 1 is clarified even further in section 104 (1) which states that: "Detained persons may not be subjected to mental or physical ill-treatment". Although the German Criminal Code does not expressly prohibit torture and other cruel, inhuman or degrading treatment or punishment, such acts are made criminal offences under section 340 of the Code ("Bodily harm by public officials") and can carry a penalty of up to five years' imprisonment.

(15) Report of the Special Rapporteur, E/CN.4/1997/7, paragraph 79.

(16) *Frankfurter Rundschau*, 4 December 1996.

(17) This case was described by Amnesty International in a previous publication (see Appendix II, 6).

(18) These two cases were previously documented by Amnesty International in February 1996 (see Appendix II, 8) and are updated below.

(19) Amnesty International's emphasis.

(20) See page 29 for clarification of the term "proportionality".

(21) Originally it was reported that Nasreddine Belhadebs had suffered a fracture of the shoulder. In fact, the operation which he later underwent was for torn shoulder ligaments.

(22) According to Article 1 of the Convention against Torture, the term torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

(23) Not all the publicity about Amnesty International's involvement in the case was so favourable: on 11 February 1996 in a lengthy article the German news magazine *Focus* questioned Amnesty International's research methods in this case and others, and criticized the organization for ignoring obvious contradictions in the statements given by Binyamin Safak and the officers. The magazine listed some of these contradictions which Amnesty International had not mentioned: Binyamin Safak was known to the Frankfurt police and had a reputation for losing his temper easily. Furthermore, he drove an expensive Mercedes, wore his hair long, his shirt open and sported a gold chain around his neck. Amnesty International's comments in its telephone interview with the magazine, that the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment applied to everyone, including Binyamin Safak, were not published. Nor was a letter Amnesty International wrote to the magazine in which it responded to criticism of its research methods.

(24) Amnesty International described this case in detail in a previous publication (see Appendix II, f).

(25) Section 152 (2) of the Code of Criminal Procedure.

(26) Section 161 of the Code of Criminal Procedure.

(27) Section 152 (1) of the Organization of the Courts Act.

(28) Amnesty International's emphasis.

(29) Section 160 (2) of the Code of Criminal Procedure.

(30) Sections 170 (1) and 203 of the Code of Criminal Procedure.

(31) Section 203 of the Code of Criminal Procedure.

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

(33) A neighbour told investigators that he heard "Mr K. roar out (among other things): 'Why are you hitting me, I've done nothing to you'. The cries lasted quite a while", while Khaled C. (a cook in Mustafa K.'s restaurant who had accompanied his employer to his flat) stated that he witnessed "...two officers [go] straight for Mr K. without explanation...Both officers pushed him to the floor with their knees. The civilian officer kicked Mr K. in the side of his body. Mr K. screamed with pain.". Another neighbour also confirmed that: "Mr K. was quite literally chucked into the vehicle". In the report of their investigation, the prosecuting authorities ignored or dismissed much of this evidence. Most crucially, they argued that Mustafa K. could have been lying about his alleged ill-treatment, in order to incriminate the officers and at the same time to defend himself against allegations that he resisted arrest, while the evidence given by Khaled C. was unreliable because of the "relationship of dependency" between him and Mustafa K.

(34) Indeed, the main interviews conducted with the principal suspects appeared to have been carried out by the officers' own superior who passed the transcripts on to police investigators together with the written comment: "As agreed on the 'phone, here are the statements of the fellow officers involved...Have fun!".

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- (35) Report of the PUA, page 951.
- (36) Ibid.
- (37) Report of the PUA, page 1,127.
- (38) *Bonner General-Anzeiger*, 13 December 1996.
- (39) *TAZ*, 17 October 1996.
- (40) The bodies representing the interior and justice ministers of the *Länder* continue to refuse to maintain and publish regular, uniform and comprehensive statistics on complaints about ill-treatment by police officers; the interior ministers maintain that this is “not necessary”, the justice ministers that it is “not possible”. However, the few available figures that there are suggest that as many as 95% of such complaints are rejected by the prosecuting authorities after investigation.
- (41) See section 4 of this report.
- (42) Document CCPR/C/79/Add. 73, paragraph 11, 8 November 1996.
- (43) Report of the prosecuting authorities’ investigation, page four.
- (44) Letter to Amnesty International from the Hamburg Minister of the Interior, December 1994.
- (45) Ibid.
- (46) Report of the prosecuting authorities’ investigation, page seven.
- (47) Report of the prosecuting authorities investigation, page 11.
- (48) Section 153 (a) of the Code of Criminal Procedure states that in the case of misdemeanours, the trial judge can stop the trial and order the accused to pay a financial penalty, provided “public interest in prosecuting the offence has been satisfied and the degree of culpability [attached to the accused] is not high”. Both the accused and the prosecution must agree to the court’s decision.
- (49) With its two-page reply to Amnesty International the ministry also enclosed, and referred to, a copy of a reply by the German Government (ref: 13/3188, dated 4 December 1995) to a written parliamentary question (ref: 13/2961).
- (50) In an article which appeared in the *Frankfurter Rundschau* on 3 April 1997, a spokesman for the BGS stated that since Kola Bankole’s death, gags and parcel tape were no longer used to restrain detainee’s who violently resisted attempts to deport them.
- (51) Report of the PUA, page 1,131.
- (52) Report of the PUA, page 1,123.
- (53) Document CCPR/C/79/Add. 73, paragraph 12, 8 November 1996.
- (54) This case was described in Amnesty International’s May 1995 Report (pages 46-7).
- (55) For a fuller account of the German authorities’ reactions to its May 1995 Report, see Appendix II, ñ.
- (56) See the Amnesty International document *Proposed Standards for National Human Rights Commissions* (AI Index: IOR 40/01/93), published in January 1993.
- (57) Marburg is in the *Land* of Hesse.