

The Committee's concluding observations and comments (CAT/C/GER, May 1998) noted that no cases of torture within the strict meaning of article 1 of the Convention were reported and tainted evidence had not been reported as having been used in any judicial proceedings. The Committee welcomed the establishment of twelve torture rehabilitation centres and the fact that Germany is a contributor to the UN Voluntary Fund for Victims of Torture. Problems arising from the integration and management of large number of refugees and other minorities of non-German descent and attempts to maintain fair and equitable asylum and immigration procedures were noted as impeding the application of the provisions of the Convention.

The subjects of concern identified by the Committee included: failure to integrate the precise definition of torture, as contained in article 1 of the Convention, into the German legal order; the fact that statistical coverage of the incidence of torture, aggravated forms of torture with specific intent (*dolus specialis*) and incidents causing severe mental pain or suffering ("mental torture") are not covered by present legislative provisions; lack of clarity as to the exclusion or not of exculpation by justification and superior order; the large number of reports of police ill treatment, mostly in the context of arrest, from domestic and international non-governmental organizations; the conclusions of the study "The Police and Foreigners", commissioned by the Conference of Ministers of Internal Affairs in 1994 and presented in February 1996, to the effect that police abuse of foreigners is more than "just a few isolated cases"; and the incidents of suicide of persons in detention while awaiting deportation.

The Committee also expressed concern over: the apparently low rate of prosecution and conviction in the alleged incidents of ill treatment by the police, especially of people of foreign descent; the existence of certain open-ended legal provisions permitting under certain circumstances the discretionary but significant reduction of the legal guarantees of those detained by the police, such as provisions permitting the police in certain cases to refuse permission to persons detained at a police station to notify relatives of their arrest; and the fact that references to "the principle of proportionality" — unless with respect to specific and binding decisions of the courts — may lead to arbitrary reductions in such guarantees.

The Committee recommended that the government, *inter alia*:

- ♦ adopt the precise definition of the crime of torture foreseen by the Convention and integrate it into the internal German legal order;
- ♦ envisage the possibility of making the necessary declarations so that Germany is bound by articles 21 and 22 of the Convention (complaints procedures);
- ♦ significantly strengthen both internal disciplinary measures against offending police officers and external prosecutorial and judicial measures to

ensure that in future all police officers accused of ill treatment of domestic and foreign nationals alike are brought to justice;

- ♦ without prejudice to ordinary state procedures and in order to ensure that in cases of alleged ill treatment by police officers such conduct is open to the fullest scrutiny, take steps to open criminal procedures to subsidiary prosecution by the victims of ill treatment;
- ♦ take steps to make admission procedures and civil procedures for damages more widely applicable and possible;
- ♦ shorten the length of the investigation of complaints of police ill treatment;
- ♦ give further legislative attention to the need to prevent all evidence obtained directly or indirectly by torture from reaching the cognizance of the deciding judges in all judicial proceedings;
- ♦ provide training in human rights generally and the Convention specifically, on a compulsory basis, to police and immigration officers of all ranks, as well as medical personnel; provide compulsory training to these same officers in the areas of conflict management and ethnic minorities;
- ♦ continue its efforts to ensure that all detainees, at the outset of their custody, are given a form in a language they understand, outlining their rights, including the rights to be informed of the reason for their arrest, to contact a relative and a lawyer of their choice, to submit a complaint about their treatment and to receive medical assistance; and
- ♦ in order to make future judicial proceedings against those suspected of ill treatment possible, require police officers to wear a form of personal identification that would make them identifiable to those who allege ill treatment.

THEMATIC REPORTS

Mechanisms of the Commission on Human Rights

Extrajudicial, summary or arbitrary execution, Special Rapporteur on: (E/CN.4/1998/68, paras. 16, 17; E/CN.4/1998/68/Add.1, paras. 186–187)

The report refers to a case previously transmitted to the government related to a Nigerian national who reportedly died in August 1994. According to the report, the individual died in the aircraft which was to return him to Nigeria after being injected with a sedative. The government informed the Special Rapporteur (SR) that, as of November 1996, the case was still subjudice. The SR subsequently requested that the government provide further clarification of the case, particularly with regard to the results of the intermediary proceedings against the emergency doctor treating the person, as well as of the main proceedings if applicable.