

Stefaan De Clerck
Minister for Justice
Belgian Presidency of the EU

Brussels, 30 July 2010
Our Ref: B983

Dear Mr De Clerck,

Subject: Germany must investigate police abuse claims

Amnesty International would like to draw your attention to its report *Unknown Assailant - Insufficient investigation into alleged ill-treatment by police in Germany* published on 7 July.

This report documents human rights violations against individuals, including deaths in custody, excessive use of force and other forms of cruel, inhuman or degrading treatment perpetrated by police officers in Germany since Amnesty International's 2004 report on this issue. It also outlines the reasons why law enforcement officials are rarely brought to account for such human rights violations.

The EU should take into account the evidence presented in this report while considering all measures in the field of criminal justice, particularly in the development of procedural safeguards for defendants and the initiative for an European Investigation Order. Furthermore, the EU has an obligation to address all evidence of human rights violations in its member states and accordingly should raise the conclusions and recommendations of this report with the German authorities.

The Report

Amnesty International documents a number of human rights violations by German law enforcement officials between the years 2004 and 2009. The report details three deaths and 12 cases of serious injury following police action, however it is believed that there could be many more cases.

The report describes how excessive force is used during arrests, against suspects held in police stations and protesters at demonstrations, during deportations and on other occasions. Amnesty International is concerned that despite Germany's obligations under national and international law, abuses committed by the police continue to take place.

On 7 January 2005, Oury Jalloh, an asylum-seeker from Sierra Leone burned to death, after having been tied to a bed in a cell at Dessau police station in Saxony-Anhalt. Oury Jalloh was arrested for allegedly harassing four women while under the influence of drugs and alcohol. Amnesty International is gravely concerned that Oury Jalloh was left alone in a cell while physically restrained, that the police failed to regularly monitor his safety and well-being, and ignored the initial fire alarm warning. The accused police officers on duty when he burned to death remain in office, but are no longer working at the same police station.

It is widely acknowledged that police officers perform a difficult and dangerous task, often at great personal risk, and that the great majority of officers fulfil their duties professionally and lawfully. However, officers responsible for criminal conduct must be brought to justice in full and fair proceedings. Victims have the right to an effective remedy and reparation. Germany has failed to live up to international standards on effective and independent investigations. Lack of information about how to lodge a criminal complaint, difficulty in identifying police officers and inadequate investigations have prevented victims or their relatives from receiving justice. This may lead to a climate of impunity and a lack of accountability. Amnesty International calls on the German authorities to carry out prompt impartial, independent and thorough investigations in all cases of alleged human rights violations by police officers. In addition, Amnesty International calls on the German authorities to improve the current system, in particular by establishing independent police complaints bodies; ensuring that police officers are individually identifiable when on duty and providing regular training to police officers in the legal, safe and proportionate use of force.

Recommendations to the EU

On 29 April 2010, Belgium and seven other EU Member States presented an *Initiative for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters*.¹ The Six-Month

Programme of the Belgian EU Presidency notes that the Presidency will work 'on the introduction of a new universal system for taking evidence'.² While Amnesty International does not oppose new mutual recognition instruments, the organisation is concerned that the initiative fails to adequately address the protection of human rights while gathering evidence. This is particularly worrying in a context where very few common standards are in place regarding evidence at the EU level and where safeguards are still deficient with regards to the criminal procedure.³

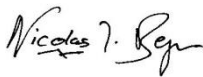
The report on Germany follows a number of other reports by Amnesty International on human rights violations in law enforcement and justice systems across EU member states in recent years. For example in 2009 Amnesty International documented racial discrimination in the Austrian justice system, police violence and impunity in France as well as ill-treatment during arrest and detention in Greece.⁴ These reports have demonstrated the lack of protection of human rights in law enforcement and judicial systems across the EU. While developing new instruments on criminal justice, it is of utmost importance to address these shortcomings. Amnesty International therefore calls on the Belgian Presidency to ensure that human rights are at the core of the development of all instruments on criminal justice.

The persistent failures in EU member states' police and justice systems must be addressed by the EU also within the framework of a broader discourse on internal violations of human rights obligations. Such human rights violations directly challenge the EU's commitment to build a common area of Freedom, Security and Justice founded on human rights. There is a shared responsibility of the EU to ensure accountability for human rights violations within its territory as provided for in Article 6 and 7 of the Treaty of the EU. Amnesty International reiterates its call for the EU to collectively engage in peer review, monitoring and redress of member states' human rights shortcomings.


Amnesty International calls on the Belgian Presidency to:

- request the German authorities to take into account the findings of Amnesty International's research and implement the concrete recommendations of the report;
- ensure that police abuse is raised and human rights issues are prioritised in connection with the development of future EU measures on police and judicial cooperation, including:
 - the development of procedural safeguards to protect the rights of suspects and detainees
 - the development of an evaluation system of EU member states' criminal justice systems
 - the design of awareness raising and training programmes for police and judicial authorities across the EU;
- develop oversight and accountability mechanisms at the EU level to review and monitor the human rights compliance of member states' policies.

We thank you for your attention and look forward to your response. We remain at your disposal to discuss further the issues raised in this letter and the new report.



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¹ 2010/0817 (COD)

² Programme of the Belgian Presidency of the EU Council p.44

³ *Amnesty International's Response to the Green Paper from the European Commission on obtaining evidence in criminal matters from one Member State to another and securing its admissibility*, January 2010

⁴ See reports *Victim or suspect: A question of colour: Racial discrimination in the Austrian justice system*, 9 April 2009 (AI Index: EUR 13/002/2009) and *Public Outrage: Police Officers Above the Law in France*, 2 April 2009 (AI Index: EUR 21/003/2009), *Greece: Alleged abuses in the policing of demonstrations*, 30 March 2009 (AI Index: EUR 25/001/2009)