

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Kosovo: Justice delayed is justice denied

On the third anniversary of the unlawful killings of Mon Balaj and Arbën Xheladini and serious injury of Zenel Zeneli and Mustafë Nerjovaj in Pristina on 10 February 2007, Amnesty International calls on the Special Representative of the UN Secretary General (SRSG) to ensure that the families of Mon Balaj and Arbën Xheladini, and two injured men, Zenel Zeneli, Mustafë Nerjovaj are granted access to justice, by allowing their complaint to be heard by the Human Rights Advisory Panel.

Mon Balaj and Arben Xheladini were killed during a demonstration against a proposal on the future status of Kosovo issued by UN Special Envoy Martti Ahtisaari in the capital, Pristina. Although the demonstration was non-violent, the police of the UN Interim Administration Mission in Kosovo (UNMIK) used tear-gas to disperse the demonstrators when they refused to turn away from the Kosovo parliament. In addition, members of a Romanian Formed Police Unit (FPU) under UNMIK control fired rubber bullets at demonstrators. Mon Balaj and Arben Xheladini were killed, and Zenel Zeneli and Mustafë Nerjovaj and others were injured by rubber bullets.

An internal UNMIK investigation in 2007 found that the cause of death and injury was the improper use of rubber bullets by members of the Romanian FPU. Despite an investigation by a military prosecutor in Romania the officers responsible have not been identified or brought to justice. Nor have those who ordered, or failed to prevent, the use of rubber bullets, (found by the internal UNMIK investigation to have been out of date and not safe for use) been held to account.

Amnesty International notes with concern that it appears increasingly unlikely that those responsible for the unlawful killings and serious injuries will be held to account, or reparations awarded to the two injured men and the families of those killed. However, the organization notes that criminal proceedings have been reopened against Albin Kurti, charged with organizing and participating in the Vetëvendosje! demonstration on 10 February 2007.

Amnesty International is deeply concerned the victims of that day have not yet been granted access to justice. It is now three years since the Balaj and Xheladini families lost their sons in tragic circumstances and Zenel Zeneli and Mustafë Nerjovaj were wounded. Amnesty International considers their pain and suffering has been unduly prolonged as a result of UNMIK's failure to allow them access to an effective remedy.

A complaint was made against UNMIK by Zenel Zeneli and Mustafë Nerjovaj and the parents of the two deceased to the Human Rights Advisory Panel (HRAP) on 19 March 2008. The HRAP was introduced by law by UNMIK in March 2006 to provide remedies for acts and omissions by UNMIK. The HRAP does not have powers to initiate a criminal investigation, but may recommend to UNMIK that such an investigation be initiated

Amnesty International is extremely concerned that the SRSG and the UNMIK Office of Legal Affairs have repeatedly obstructed the families' and victims' access to reparation, including access to justice. Since September 2009, when the HRAP declared the case admissible, UNMIK contested the HRAP's decision; refused to allow a public hearing of the case in March 2009; and refused to attend the subsequent public hearing scheduled for June 2009. In

October 2009 the Special Representative of the UN Secretary General (SRSG) then promulgated a new UNMIK Regulation concerning the HRAP, which had the effect of declaring the case inadmissible. This has recently been re-stated by the SRSG in a letter to lawyers acting for the victims.

Amnesty International has welcomed the monetary compensation offered to the victims and their relatives under Section 29 of the UN Convention on the Privileges and Immunities of the UN, but regrets the conditionality initially placed on this offer, and that acceptance of such an offer appears to prevent the families from pursuing their case before the HRAP.

Amnesty International does not consider monetary compensation alone fulfills the obligation to ensure the victims and the families adequate, effective and prompt reparation for the harm they have suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Such reparations should include, amongst other things, access to justice.

Amnesty International considers that a public hearing in this case, involving unlawful killings and serious injuries resulting from excessive use of force, is in the interest of justice and the protection of human rights.

Background

UNMIK, which remains in Kosovo under UN Security Council Resolution 1244/99, was mandated to re-establish the rule of law and respect for human rights in Kosovo. Amnesty International considers that the UN and contributing countries must ensure that all those responsible for human rights violations, criminal or other wrongful conduct should be held accountable, including through criminal prosecution, where appropriate.

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