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EXTERNAL



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## Federal Republic of Yugoslavia Kosovo Province

### Besnik Restelica: Death following alleged ill-treatment in custody

Besnik Restelica, a 30-year-old ethnic Albanian, an unemployed graduate technician from Kosovo province in the Federal Republic of Yugoslavia, died in a prison cell in Priština on 22 February 1997. According to official reports he had committed suicide by hanging himself. Ethnic Albanian sources dispute this explanation of his death and argue that he may have died as a result of ill-treatment or that he was induced to commit suicide by repeated ill-treatment in detention. Amnesty International is not in a position to draw a conclusion about how he died, but several factors suggest that he was severely ill-treated following his arrest.

Besnik Restelica was arrested on 30 January 1997 at a time when some 100 ethnic Albanians in Kosovo province were arrested on suspicion that they were members of clandestine organizations allegedly responsible for acts of terrorism.

Besnik Restelica's lawyer has stated that he first saw his client on 4 February when he was brought before an investigating judge for questioning. On this occasion he noticed bruises on his client's face and saw that Besnik Restelica was not wearing shoes; he suspected that this was because his feet were swollen from beating. He asked the investigating judge to record these injuries but Besnik Restelica opposed this; his lawyer assumed that his client feared reprisals from police if he formally complained of ill-treatment.

Subsequently, an investigation was started against Besnik Restelica and 15 others on charges of being members of a little-known organization, the Kosovo Liberation Army (*Ushtria Çlirimtare e Kosovës*), which has claimed responsibility for a series of killings and other attacks in 1996 and early 1997 on Serbs, mainly police officers, and some ethnic Albanians alleged to be pro-Serb. According to his lawyer, Besnik Restelica denied any involvement in this organization or in the attacks. By July 1997 none of the other 14 men under investigation had been indicted on these charges.

On 19 February Besnik Restelica's lawyer tried to visit him again, but although he had obtained written permission for this visit from the investigating judge, he was informed by the prison authorities that he could not see Besnik Restelica because he was not in the prison but was being

questioned elsewhere by state security police. Amnesty International notes that under Yugoslav law, the investigating judge is responsible for carrying out an investigation and police or state security police may only undertake parts of such an investigation if they are instructed to do so by a formal court order. It appears that no such order had been issued in the case of Besnik Restelica, or if it had, this was not communicated to his lawyer. The lawyer made a further unsuccessful attempt to see his client on 21 February, when the prison authorities told him that visiting hours were over. On 23 February police reportedly informed Besnik Restelica's family that he had committed suicide by hanging himself in his cell the previous day.

An examination of the scene of Besnik Restelica's death was carried out by an investigating judge in the presence of a public prosecutor and two police officers - but not his lawyer, who should have been notified - within an hour of the death which, according to the report issued by the investigating judge, had taken place between 2.15pm and 2.30pm on 22 February. The report notes that Besnik Restelica's body had marks on the neck indicating that he had died by hanging and that there were two T-shirts tied together attached to an upper bunk bed in the cell which had been cut; a prison guard stated that he had cut the shirts when he had found Besnik Restelica hanging from them. On the instructions of the investigating judge an autopsy was carried out on 23 February 1997 at the Institute of Forensic Medicine in Priština. The autopsy report confirmed that Besnik Restelica had died in Priština prison on 22 February at about 2pm, that the cause of death was suffocation due to hanging and that his death was most probably suicidal. The report also stated that apart from the marks around his neck there were no other marks of injury on his body. A death certificate issued on 27 March by the Institute for Forensic Medicine also states that Besnik Restelica committed suicide by hanging himself (the date of his death is incorrectly given as 23 February 1997).

Some ethnic Albanian sources dispute this explanation of his death. After the autopsy Besnik Restelica's body was taken to his home and his family and others who saw it state that there was considerable bruising on his face and body, particularly on his hands and feet, which they considered indicated that he had been tortured in police custody. They believe Besnik Restelica died as a result of ill-treatment or else he committed suicide because of fear of further torture. On 24 February 1997 a five-member delegation from the European Parliament, led by Doris Pack (Germany), visited Besnik Restelica's family in Podujevo, and after seeing his body they also reportedly concluded that he had been severely tortured. Amnesty International notes that it is difficult to assess what weight may be given to this testimony: the body would have borne the marks of hanging and of the subsequent autopsy, and the delegates did not, as far as Amnesty International knows, include anyone with medical expertise.

According to ethnic Albanian sources Besnik Restelica was a tall man and it is doubtful whether the bunk bed from which he allegedly hanged himself was high enough for him to have killed himself in this way (however, the height and position of the bunk bed is not generally known).

A request filed by the lawyer on 24 February for a second autopsy to be carried out in his (the lawyer's) presence by Dr Dobričanin (the Director of the Institute for Forensic Medicine, who had personally carried out the first autopsy), and by two other named doctors, one a Serb and one an Albanian, was refused by the investigating judge on the grounds that it was superfluous. The lawyer had argued that it was necessary to establish exactly how Besnik Restelica had died - given that prisoners detained in custody are normally deprived of the means of causing themselves injury - and to record all the injuries on the dead man's body.

On 27 February a representative of the International Committee of the Red Cross (ICRC) in Priština reportedly told a BBC correspondent that the ICRC had since 5 February been seeking

permission from the Serbian authorities to visit Besnik Restelica and other detainees and had finally obtained permission to carry out a visit on 25 February.<sup>1</sup>

Besnik Restelica's funeral took place on 25 February, and was attended by thousands of ethnic Albanians as a mark of protest against continued human rights violations against members of their community in Kosovo province.

### **Amnesty International's concern**

Amnesty International is not in a position to assess what caused Besnik Restelica to die. However, the organization believes that several factors, including his lawyer's statements concerning his client's appearance before the investigating judge, the refusal to let the lawyer visit his client on 19 and 21 February, and a long-standing and consistent pattern of ill-treatment of ethnic Albanians accused of political offences, suggest that he may have been severely ill-treated by police following his arrest on 30 January 1997. The organization notes that police officers who commit human rights violations commonly enjoy impunity and that this policy on the part of the authorities effectively encourages the perpetration of further abuses. Amnesty International calls on the Yugoslav authorities to investigate promptly, thoroughly and impartially the circumstances surrounding Besnik Restelica's arrest, detention and death; these investigations should include not only the allegations of ill-treatment, but also the procedural violations during Besnik Restelica's detention and following his death. The organization calls on the authorities to bring to justice any police or state security officer or prison warden found responsible for his death or for having tortured or ill-treated him prior to his death. The organization further calls upon the authorities to grant fair and adequate compensation to the victim's family if it is established that he was tortured or ill-treated prior to his death.

Amnesty International also calls on the FRY authorities to institute safeguards to prevent torture and ill-treatment of detainees, in particular those suspected of political crimes. The organization does not condone political violence and acknowledges the gravity of the offences of which three groups of ethnic Albanians who were arrested in January and February 1997 are suspected and the duty of the authorities to prosecute the perpetrators of these offences. However, Amnesty International has repeatedly expressed its concern to the authorities about allegations that the defendants were ill-treated following arrest and about violations of national and international law which have undermined their right to defence. Amnesty International calls on the authorities to grant all detainees full legal safeguards including unrestricted access to their lawyers and access by their lawyers to the complete court dossier. The organization also calls on the authorities to hold prisoners only in publicly recognized places of detention and to make available without delay accurate information about their arrest and detention to courts, families and lawyers; to ensure that any statements procured by torture or ill-treatment are not admitted as evidence in court proceedings; and to ensure that all places of detention are regularly inspected by an independent body, such as the ICRC, able to visit unannounced and with unrestricted access.

### **Background**

Since 1989, when the province's previous autonomy within the Republic of Serbia was effectively abolished, most ethnic Albanians - who account for almost 90 per cent of the population of Kosovo - have refused to recognize Serbian authority in the province. The majority have supported the main

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<sup>1</sup>Reported by Kosovo Information Centre, 27 February 1997.

ethnic Albanian political party, the Democratic League of Kosovo, which, while calling for Kosovo to be recognized as an independent state, has consistently advocated the use of peaceful means.

However, since 1996 there have been signs that some ethnic Albanians have lost confidence in the efficacy of peaceful methods and have turned to violence. Most of the attacks have taken place since April 1996, following an incident in which an ethnic Albanian student was shot dead by a Serb civilian - who has been charged and convicted. Since then, at least six police officers (two of them ethnic Albanians), three Serb civilians, and three ethnic Albanian civilians alleged to have "collaborated" with the Serbian authorities, have been killed. Some 15 other police officers and civilians have been wounded. An organization calling itself the Kosovo Liberation Army, about which little is known, has claimed responsibility for most of the attacks. Ethnic Albanian leaders and others have warned that unless urgent steps are taken to resolve Kosovo's problems by peaceful negotiation, popular support may grow for those who resort to violence.

In January and February 1997 the authorities arrested some 100 ethnic Albanians in the province and since then some 50 of those detained have been charged with terrorist activity. Many of those who were released alleged they had been tortured. Lawyers acting for those who remain detained have complained that their clients have also been ill-treated. For example, a lawyer acting for Alban Neziri, a co-defendant of Besnik Restelica, has stated that police tortured his client with electric shocks and beat him in order to force him to confess to membership of the Kosovo Liberation Army, and that as a result of this ill-treatment he could scarcely walk. In addition, information that Amnesty International has received over many years indicates that police very commonly beat ethnic Albanians suspected of political offences.

Another trial of ethnic Albanians accused of terrorist activity which concluded on 30 May 1997, that of Avni Klinaku and co-defendants, failed to meet international standards for a fair trial partly because the court accepted as evidence statements made by the defendants during pre-trial proceedings without investigating their allegations, made in court, that these statements had been obtained by torture. For example, defendant Emin Sallahu testified that while under investigation and prior to giving his statement a gas mask was placed over his face, paper was pushed into his mouth, he was beaten with rubber and electric clubs on the hands, legs, kidney area and head, and threatened with the administration of drugs. Another defendant's statement, that of Dulah Sallahu, was also allegedly procured under duress, yet admitted by the court as evidence although a medical certificate issued by a prison doctor reportedly recorded bruises on his hands caused by blows.<sup>2</sup>

Amnesty International has no position on the question of Kosovo's status; the organization is concerned solely with the protection of the human rights of individuals. They include the right to life, the right to a fair trial for political prisoners and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Both Yugoslav law and international human rights treaties which the Federal Republic of Yugoslavia recognizes as legally binding (in particular the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ratified by the Socialist Federal Republic of Yugoslavia in 1991) prohibit torture and other cruel, inhuman or degrading treatment.

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<sup>2</sup>"Pristina Court Rules Without Relevant Evidence," Humanitarian Law Centre *Communique* 2 June 1997.