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Federal Republic of Yugoslavia/Kosovo: Momcilovic family cleared of murder by Kosovo court

Yesterday's acquittal of three members of the Momcilovic family in Kosovo appears to be in line with international standards of justice, Amnesty International said today.

Miroljub Momcilovic and his sons Boban and Jugoslav from Gnjilane (Gjilan), were accused of the murder an ethnic Albanian man, Afrim Gagica, and the attempted murder of Bekim Sgabani last year in Gnjilane (Gjilan).

The court however found the three men, who had been held in custody since 10 July last year, guilty of illegally possessing weapons, and sentenced them to one year's imprisonment. Having been in pre-trial detention for more than a year, the men have now been released.

The charges arose over an incident on 10 July 1999, when a group of ethnic Albanians, all allegedly armed, approached the gate of the yard to the Momcilovics' house and business and demanded entry via an intercom. Over the next few minutes shots were fired, including by US members of the KFOR peacekeeping force who were also present on the scene. Afrim Gagica and another ethnic Albanian, Naser Azemi, were killed and two others were injured.

The Momcilovics and the two surviving ethnic Albanians were immediately taken into custody by KFOR soldiers. The Momcilovics were subsequently charged with the murder of Afrim Gagica and the illegal

possession of firearms. The local prosecutor ruled that KFOR soldiers had lawfully killed Naser Azemi, because he had aimed his weapon at them.

During the course of the 13-month criminal proceedings Amnesty International expressed concern about the fairness of the trial and warned that the Momcilovics could become victims of a miscarriage of justice. Among other things Amnesty International was concerned about the impartiality of the court. The investigating judge did not order forensic tests to be carried out to confirm whether the bullets which hit the victims had been fired by weapons allegedly found in the house of the accused.

Given that KFOR had already admitted responsibility by 10 January 2000 for the death of Naser Azemi in the incident, it could not be ruled out that KFOR soldiers had also killed Afrim Gagica. The investigating judge also refused to admit into evidence a video tape of the incident taken from a security camera, which was considered vital to the defence.

The video tape was eventually admitted into evidence at trial in April 2000, after which the trial was adjourned. Significantly, two days before the trial resumed on July 22, KFOR representatives turned over to the court a 134-page report suggesting that US soldiers were responsible for Afrim Gagica's death.

On 7 August, the court -- including a French judge who had been appointed to join the panel of five Albanian judges sitting on the case during the adjournment -- attended the reconstruction of the scene, where a US sergeant and other US infantry stated that US snipers had fired on the Albanian men from an observation post a short distance away. The French judge, Patrice de Charrette, stated that this evidence

cast sufficient doubt on the prosecution case against the Momcilovic family.

Elements of the Momcilovic case have served to highlight some of Amnesty International's concerns -- repeatedly raised with Dr Bernard Koucher, Special Representative of the UN Secretary General -- that some of the applicable laws, regulations and practice regarding the administration of criminal justice in Kosovo have yet to be brought into line with international human rights standards.

The organization has expressed concerns about failures by the authorities to bring all persons who are detained promptly before a judge, and the lack of procedures like *habeus corpus* by which detainees are able to challenge the legality of their detention.

With respect to pre-trial detention, the organization has noted that people detained in Kosovo in connection with criminal matters are often held in custody for periods which exceed the time limits allowable under national law. Further concerns raised relate to the impartiality of the tribunals and to reports which suggest that ethnicity is a factor in determining whether an individual is remanded in custody or allowed to remain free while awaiting trial.

Background

The United Nations Interim Administration in Kosovo (UNMIK) is responsible for the establishment of an interim judicial system. The process has so far been fraught with difficulties, most of all the problem of ensuring that the judicial system is representative of all of Kosovo's minority communities, particularly Serbs. Almost all Serbian judges or judicial staff who were earlier appointed under UNMIK auspices have now resigned or even left Kosovo and few new nominees have appeared at the ceremonies to take their oaths.

Along with many other challenges, UNMIK has been given the task of creating a multi-ethnic, independent and impartial judicial system to ensure the rule of law in Kosovo. This task has clearly proved challenging and the deficiencies in the judicial system have hindered the establishment of the rule of law. Problems have included a lack of resources -- including the means to ensure that judicial staff are paid adequately and on time and thus not exposed to increased risk of corruption, and a lack of representation of minorities within the judiciary (which undermines the appearance of impartiality). There are also reports that judicial staff have been subject to threats, intimidation and even violent attacks. Members of minorities are particularly vulnerable to such intimidation and this is clearly one of the reasons for their failure to take up or remain in judicial appointments.

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