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Kosovo: 10 February – A step towards justice for the families and survivors

Amnesty International welcomes the Opinion of the Human Rights Advisory Panel (HRAP) issued on 3 March, in the case of Kadri Balaj, Shaban Xheladini, Zenel Zeneli and Mustafë Nerjovaj against the UN Interim Administration Mission in Kosovo (UNMIK).

The Opinion marks the first step towards justice for the victims and their families, just over eight years after the events. Amnesty International urges the Special Representative of the UN Secretary General, on behalf of UNMIK, to implement the recommendations made in the HRAP's Opinion in this case, and to take further steps to ensure that perpetrators are brought to justice.

The opinion of the HRAP was issued in relation to the events of 10 February 2007, when two people – Kadri Balaj's son Mon, and Shaban Xheladini's son Arbën – were killed and others were injured, including Zenel Zeneli and Mustafë Nerjovaj, during a demonstration organized in Pristina by the NGO Vetevendosje (Movement for Self-Determination, today a parliamentary party in opposition).

An UNMIK investigation in 2007 established that the men had been killed and injured through the use of rubber bullets, which were past expiry date (the rubber had perished, revealing the steel ball beneath). These were fired directly at demonstrators by some of the 10 members of the Romanian Formed Police Unit, part of UNMIK Police at the time. According to evidence secured by UNMIK, they fired 59 rubber bullet rounds into the demonstration that day. In addition to the victims listed in the case, 30 other demonstrators were injured by the rubber bullets. However, UNMIK's investigation failed to identify those responsible or carry out any internal disciplinary procedure to hold those responsible to account.

The Human Rights Advisory Panel was introduced in March 2006 to provide remedies for acts and omissions – including human rights violations – by UNMIK. On 3 March, they found in this case that UNMIK had failed to protect the right to life of the victims under Article 2 of the European Convention on Human Rights (ECHR), both in causing the deaths and injuries, and in failing to conduct an effective investigation into the deaths and injuries.

The HRAP also found that UNMIK had violated the right to peaceful assembly, under Article 11 of the ECHR, concluding that the force used by UNMIK police to disperse the demonstration was not absolutely necessary; further there was no evidence to suggest that any of the four men were involved in any violent acts.

Amnesty International concurs with the HRAP's recommendations that UNMIK must publicly apologize for the failure to protect the lives of Mon Balaj and Arbën Xheladini, as well as for the injuries to Zenel Zeneli and Mustafë Nerjovaj, and provide the complainants with adequate compensation for the moral damage suffered. Amnesty International calls on the Special

Representative of the UN Secretary General in Kosovo, to fully discharge UNMIK's obligation to provide reparation to the victims, and the families, who have been waiting for recognition of their pain and loss for eight years.

Amnesty International is however disappointed that the HRAP did not formally request UNMIK or any other body to reopen an independent investigation, as it has done in previous opinions on other complaints to the panel. The organization considers that this very serious violation of human rights – the denial of the right to life of Mon Balaj and Arbën Xheladini – cannot be left unpunished.

The HRAP did not dispute the findings of the 2007 UNMIK investigation which found that UNMIK police used excessive force, failed to exercise proper control over ammunition or ensure officers were adequately trained. However, the HRAP also found that there was no clear chain of command or sufficient communication with units on the ground.

The Panel concluded that while the investigation into the deaths and injuries was opened promptly, no forensic examinations were however conducted; there was delay in interviewing the suspected police officers, and no steps were taken to prevent UNMIK police officers from colluding in their testimonies. Further, no thorough attempt was made to identify the officers responsible, either during UNMIK's own investigation, nor in a later inquiry, conducted by the Romanian authorities.

While the Panel did not explicitly ask for UNMIK to reopen the case, it did, however, recommend that “in case the investigation into this matter is reopened, [...] UNMIK should provide all necessary assistance to any authority investigating this matter, in line with the Resolution of the UN General Assembly 66/93, adopted on 9 December 2011, on the Criminal Accountability of the United Nations officials and experts on mission”.

Despite the passage of time, and the lack of evidence gathered in the original UNMIK investigation, as detailed in the HRAP's opinion, Amnesty International recommends that the Special Prosecutor's Office of the Republic of Kosovo, including both international and Kosovo prosecutors, reopens the investigation without further delay. If all relevant authorities cooperate, it is not too late to collect the necessary evidence to identify the perpetrators and hold them to account.

Amnesty International also urges the Romanian authorities to fully cooperate with such an investigation, including to make available for questioning the 11 police officers who had been assisting the investigation, and who were reportedly in possession of crucial information, but who the Romanian authorities withdrew from Kosovo on 21 March 2007. Subsequently, despite requests by UNMIK, Amnesty International and others, the Romanian authorities have refused to fully cooperate in the investigation.

Further, given the HRAP's agreement that the command and control structure had broken down and that operational orders for the demonstration had not been followed, such an investigation should have the authority to establish whether any senior police officers, including the Head of UNMIK police, bear any responsibility for the failure to protect the right to life of Mon Balaj and Arbën Xheladini.

Finally, Amnesty International supports the HRAP's recommendation, in the context of guaranteeing the non-repetition of such an event on its future missions, that UNMIK takes steps “to ensure that in all instances of use of force in UN peacekeeping operations, all members of UN Civilian Police fully comply with international standards and that the general international human

rights standards are upheld at all times by the United Nations, including when performing administrative and executive functions over a territory”.

Unless concrete steps are taken to open an independent investigation, the killed and injured men and their families will be denied redress for the human rights violations perpetrated by UNMIK, while the perpetrators remain immune from prosecution in Kosovo courts or have escaped prosecution in their own jurisdiction.

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