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## **Federal Republic of Yugoslavia (FRY)/ Kosovo: Risk of serious miscarriage of justice in trial of Serbs**

The trial of three Serb men, all members of the same family, beginning in Priština on Tuesday, risks being a serious miscarriage of justice, Amnesty International said today.

The three men, Miroljub Mom\_ilovi\_ and his sons Boban and Jugoslav, are accused of the murder of an ethnic Albanian man, Afrim Gagica, and the attempted murder of another on 10 July 1999 in Gnjilane (Gjilan). Their trial commences in Priština on 25 April.

“The conduct of the criminal proceedings so far casts doubts on the independence and impartiality of the Priština court which will try the Mom\_ilovi\_s, and whether their right to a fair trial will be respected,” Amnesty International added.

The court has refused to accept as evidence a videotape from a security camera which records part of the incident and may be crucial to their defence. It also reportedly failed to ensure that forensic tests were carried out to confirm whether the bullets that hit the victims were fired from guns allegedly found in the Mom\_ilovi\_'s house.

“Unless serious efforts are made to remedy the serious flaws that marred the proceedings so far -- in particular ensuring that all necessary evidence is accepted -- the case should be transferred to another court,” Amnesty International said.

The Mom\_ilovi\_s have been held in custody since 10 July last year while an ethnic Albanian accused of similar serious charges as a result of the incident has long been at liberty while awaiting trial.

“Ethnicity appears to be a factor deciding whether defendants awaiting trial in Kosovo are held in custody,” Amnesty International added, pointing out that international human rights standards presume that pre-trial detention is an exceptional measure to be used only when necessary and reasonable.

### **Background**

Afrim Gagica died on 10 July 1999 in front of the Mom\_ilovi\_'s house. He and several other ethnic Albanians, all allegedly armed, approached the gate of the yard and demanded entry via an intercom. Over the next few minutes shots were exchanged, some of which were fired by members of the KFOR Kosovo peacekeeping force. At the end, Afrim Gagica and another ethnic Albanian, Naser Azemi, lay dead while two others had been injured.

The Mom\_ilovi\_s and the two surviving ethnic Albanians were immediately detained by KFOR soldiers and taken into custody. The three Serbs were subsequently charged with the murder of Afrim Gagica and the illegal possession of firearms. They remain in custody in a KFOR detention centre. One of the injured ethnic Albanians, who was allegedly shot by KFOR soldiers, was subsequently charged with the attempted murder of three US KFOR soldiers but remains free while awaiting trial. The local prosecutor ruled that KFOR soldiers

had lawfully killed the other dead Albanian, Naser Azemi, because he had aimed his weapon at them.

The videotape - which Amnesty International has viewed - shows the Albanian men approaching the gate of the house, shouting threats, producing handguns and kicking the gate. A single shot is fired (not by the men in view), but no one is seen to be injured. An intensive exchange of fire, including bursts of automatic fire ensues. The recording, which may show intent to perpetrate a violent armed attack upon the Mom\_ilovi\_ house and occupants, may serve the defence case. If, as alleged by the prosecution, the Mom\_ilovi\_s did shoot and kill Afrim Gagica, they may be able to argue under Yugoslav Federal Law that they had not committed a criminal act because they were acting in self-defence, or that the mitigating circumstances warrant a milder sentence.

The participation of KFOR soldiers in the exchanges of gunfire may also cast doubt on the accusation that it was the Mom\_ilovi\_s who were responsible for the death of Afrim Gagica. Forensic evidence would be vital to establishing the facts of the case.

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.  
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