

## .....ABOUT THIS DOCUMENT SERIES

As of June 1998, the international community is looking on as the security situation in Kosovo province of the Federal Republic of Yugoslavia rapidly deteriorates and even minimal respect for human rights is withdrawn. Recent Serbian police and military operations, although ostensibly directed at the armed opposition Kosovo Liberation Army (KLA), have led to hundreds of civilian deaths, many apparently a result of deliberate or indiscriminate attacks. Attacks on civilians have been part of the reason why tens of thousands of people have fled their homes. Members of the KLA have also been responsible for human rights abuses.

Developments as of June 1998 cannot be isolated from more than a decade of unaddressed human rights violations in Kosovo province. Throughout that time Amnesty International has been documenting and campaigning against a systematic pattern of human rights violations in Kosovo province - including torture and ill-treatment by police, deaths in police custody, and unfair trials of political prisoners. The lack of effective redress for these and other violations of basic human rights in the province must be counted among the sources of frustration and anger which have culminated in the present conflict.

In addition to its ongoing research, media work and the campaigning initiatives of its members worldwide to respond to events unfolding as of June 1998, with this series of reports Amnesty International delves beneath today's headlines and continues its detailed scrutiny of the long-standing patterns of abuses in Kosovo province. Four documents in the series now being published simultaneously are:

*#1: Background: A crisis waiting to happen (AI Index: EUR 70/32/98).* A summary analysis of the causes of the present crisis, and Amnesty International's recommendations to the international community, the Yugoslav authorities and the KLA.

*#2: Violence in Drenica (AI Index: EUR 70/33/98).* A detailed analysis of arbitrary killings and extrajudicial executions during police and military operations in February-March 1998 in the Drenica region (a precursor to events in June), and reports of KLA abuses.

*#3: Deaths in custody, torture and ill-treatment (AI Index: EUR 70/34/98).* A survey of the widespread use of torture and ill-treatment against detainees and on the streets against demonstrators, including recent detailed victim testimony and photographic evidence from 1998.

*#4: Unfair trials and abuses of due process (AI Index: EUR 70/35/98).* A survey of ongoing failures in the administration of justice in political cases, including details of four political trials in 1997-98.

**Cover photograph:** *Besim Rama and codefendants at their trial, July 1997 (see this document, page 6).*

8 Rilindja.

*These reports are based largely on information gathered during an Amnesty International mission to the Federal Republic of Yugoslavia in March 1998 to investigate human rights violations, including those perpetrated in the context of police and military operations in the Drenica region, and on updated information from Amnesty International representatives in the field in June 1998. In addition, information was supplied by local human rights monitors in Kosovo and Belgrade, local lawyers, foreign and local journalists and other individuals. Amnesty International is grateful for the assistance it has received from these sources.*

*A further series of reports, now in preparation, will address the human rights situation in Kosovo from June 1998.*

**Cover photograph:** *Besim Rama and codefendants at their trial, July 1997 (see this document, page 6).*

*8 Rilindja.*

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM**

FEDERAL REPUBLIC OF

# YUGOSLAVIA

## *A Human Rights Crisis in Kosovo Province*

### Unfair trials and abuses of due process

#### **Introduction**

*The Serbian authorities have consistently failed to ensure fair trials in political cases.*

*Some 34 people were convicted and imprisoned in three major political trials in 1997 and another 16 people were convicted in absentia in the same trials. More criminal proceedings in similar cases are in process in 1998 and there may be many more unfair political trials to come.*

*The cases of torture and ill-treatment described in the companion document to this*

*report illustrate what happens to the majority of victims -- those who are ill-treated outside of police stations or detained or held by police even for relatively brief periods (see Deaths in custody, torture and ill-treatment, document #3 in this series, AI Index: EUR 70/34/98). The consequences for those who are detained for longer periods and subsequently put on trial can be even more serious: victims are coerced into making statements incriminating themselves or others which are subsequently accepted as evidence in court.<sup>1</sup>*

---

<sup>1</sup>This practice is in violation of Article 15 of the UN Convention against Torture, which requires that "... any statement which is established to have been made as a result of torture shall not be invoked as evidence in any

proceedings, except against a person accused of torture as evidence that the statement was made." Furthermore, the UN Special Rapporteur on Torture has underscored the role of the judiciary in ensuring this rule is respected and thereby preventing torture. (E/CN.4/1992/17, page 103,

Beyond the use of such testimony, Amnesty International is concerned about numerous reported violations of the Federal Code of Criminal Procedure (CCP) and international standards in which victims are detained arbitrarily without due process,

The charges applied in political cases against ethnic Albanians are usually based on the Federal Criminal Code, which excludes the possibility of the death penalty, having substituted a maximum 20-year prison sentence in its place. The death penalty is possible for "aggravated murder" under the Serbian Criminal Code, although Amnesty International does not know of any recent cases in which ethnic Albanians in Kosovo province have been condemned to death. Two Serbs, **Dejan Andjelkovi** and **Zlatan Zaki**, were sentenced to death in March 1998 for the premeditated murder of four members of the Cako family in Prizren in 1993. No executions are reported to have been carried out in Serbia since 1992.

In Article 196, the CCP specifies that the police can only detain suspects for a maximum of three days, and then only in exceptional circumstances such as for the purposes of verifying alibis; police detention should not be a normal part of the judicial process. The police are normally required to inform and hand over the suspect to the investigating magistrate who will supervise the investigations while the suspect is detained in an investigatory prison. International standards such as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment specify that a detainee should be entitled to communicate freely with his or her legal counsel and that this right can only be suspended in exceptional circumstances, and then only for a matter of days.

These rights are laid down both as

---

paragraph 280).

including by having their right to communicate freely with a defence lawyer violated.

### **The situation in law**

a safeguard against torture or ill-treatment and to ensure fair trials. The CCP, however, does not guarantee this right while detainees are in police custody, despite the fact that both the Federal and Serbian Constitutions (Articles 29 and 24, respectively) specify that "everyone has the right to be interrogated in the presence of defence counsel of his choice".

### **The situation in practice**

The CCP is routinely abused. Suspects are held for the three days and frequently for much longer without being passed to the custody of an investigating magistrate. Defence lawyers allege that police also continue to interrogate detainees after their transfer to investigatory prisons. It is of particular concern that it is during this period that ill-treatment by police takes place; in the case of those suspected of more serious crimes such as terrorism, this often amounts to torture to extract statements by coercion. Without access to lawyers, detainees are also not given the opportunity of "necessary expert assistance" to appeal against the detention according to Article 196 of the CCP. Even more seriously, Articles 10 and 218, paragraph 8 of the CCP, which explicitly prohibit the extraction of statements from suspects or witnesses by use of force or threats, are routinely ignored during investigatory proceedings.

Suspects are thus typically detained - without access to defence lawyers, family or doctors - for days, or

sometimes even weeks, while police interrogate them using various methods of torture aimed at forcing them to sign "confessions" incriminating themselves and/or others. The forms of torture and ill-treatment appear to consist of combinations of beatings with fists,

Even after transfer to investigatory prisons, defence lawyers are normally denied the opportunity to communicate freely and in confidence with their clients as required by the Body of Principles and the General Comment of the UN Human Rights Committee on Article 14 (3) of the International Covenant on Civil and Political Rights (ICCPR).<sup>2</sup> The CCP allows investigating magistrates to restrict communication between defendants and their defence lawyers before the indictment has been issued, or the investigations have been completed, without any checks or balances on this restriction (Article 74). In practice, defendants are also often denied free communication after the indictment has been issued.

### ***Unfair trials in 1997***

The concerns cited above are illustrated by three political trials which were held in 1997. Between October 1996 and February 1997 Serbian police arrested at least 100 people in connection with investigations into armed attacks against Serbian police and civilians during 1996. The bulk of the arrests were made in January 1997.

Some of the suspects were held incommunicado for many days: Besim Rama and Avni Nura were detained by police on 17 September 1996, but despite continuous efforts their family and defence

truncheons, rubber pipes or other blunt objects. In some cases electric shock batons are used as well as beating. The police have also reportedly used electric shock batons to minimize any visible signs of torture or ill-treatment which would otherwise result from beatings or similar physical stress.

lawyers were unable to obtain information about their whereabouts until early October. Then in early October, after at least 13 days' interrogation by police during which they allege they were tortured, the men were questioned by investigating magistrates. In the indictment their custody was recorded as having commenced on 29 September. Their lawyers were not allowed to be present during this interrogation. Only on 8 October were the lawyers able to visit their clients and even then were not able to speak freely with and discuss the charges against their clients. In addition Besim Rama's brother, Osman Rama, stated that he was bundled into a car by plainclothes police officers and taken to an unknown location where he was beaten and questioned about Besim's political activities. He was released and detained again for a further six days' interrogation during which he was tortured before being released.

In January and February 1997 a new wave of arrests took place in which at least 100 people were arrested. Thirty five of these were subsequently tried and two, Besnik Restelica and Jonuz Zeneli, died in custody (for further information on the death of Jonuz Zeneli see the accompanying document, Deaths in custody, torture and ill-treatment, #3 in this series, AI Index: EUR 70/34/98). There were reports that most had been tortured or

---

<sup>2</sup> In its General Comment 13 (Article 14, Twenty-first session, 1984) the Human Rights Committee stated that 14(3) (b) of the ICCPR "... requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications.

Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter." (HRI/GEN/1, page 15, paragraph 9).

ill-treated during their detention and interrogation. One of the worst cases was represented by Nait Hasani who was arrested on 28 January 1997. On 29 January he was transferred by police to a hospital in Priština, reportedly because he was in a coma as a result of the beatings he had received from the police. His family then found on 31 January that he had been abducted from the hospital. Despite their efforts to obtain information from the police about his whereabouts and denials

Those arrested between October 1996 and February 1997 were subsequently indicted in three groups which came to trial between May and December 1997.

#### **The trial of Avni Klinaku and 17 others**

In May 1997 Avni Klinaku, 15 other ethnic Albanian men and two women were sentenced to imprisonment of between two and 10 years duration. Another two men were convicted in absentia at the same trial. The charges against them were various combinations of Article 136 of the Federal Criminal Code - "Association for the purpose of hostile activity", and Article 116 - "endangering the territorial integrity [of FR Yugoslavia]". Six of them, including Avni Klinaku himself, were also convicted under Article 125 - "terrorism". They were accused of forming or belonging to a clandestine organization called the National Movement for the Liberation of Kosovo (NMLK) whose aim was allegedly to attempt, by the use of force, to detach Kosovo province and other areas of FR Yugoslavia inhabited by ethnic Albanians and form a separate state which would unite with Albania. Five were accused of having planned and prepared for an armed attack on a police patrol, and another four were accused of having handled arms. The others were mostly accused of having produced or

from the authorities about any involvement with his abduction, he reappeared on 28 February when he was brought before an investigating magistrate and questioned in the presence of his defence lawyer. His lawyer later reported that his client had told him that he had been taken by police to an unknown location where he was tied to a bed and tortured with electric shocks and was ill-treated in other ways with the aim of forcing him to sign incriminating "confessions".

distributed the organization's newspaper Çlirimi ("Liberation") or having recruited members to the organization. Many of the defendants denied that they had been involved in "terrorism" and 10 claimed that they had done no more than distribute Çlirimi. Five denied that they had even been members of the organization.

At the trial eleven of the defendants submitted statements to the effect that they had been tortured or ill-treated during interrogation and that they had given statements under duress. According to the Belgrade-based Humanitarian Law Centre (HLC) the defendant Emin Salahu described in detail how he was tortured before he gave 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 and kidney areas and threatened with the administration of drugs."<sup>3</sup> In the written judgement the judge recorded that Ermin Salahu "did not want to give his defence because the statements ... were the result of the application of coercion, force and violence against him". Other defendants similarly retracted their statements in court, although the written judgment recorded only three of them as having complained of torture (Enver Dugolli, for example, complained of torture

<sup>3</sup> HLC Communiqué, Priština court

rules without evidence, 2 June 1997.

<sup>4</sup>, but his complaint was not recorded in the written judgment). Statements extracted under torture during the initial period of interrogation were apparently presented

A report by Elisabeth Rehn, then UN Special Rapporteur of the Commission on Human Rights responsible for FR Yugoslavia, which was based on the observations of her field officers at the time of the trial, found numerous other violations of international standards of fair trial.<sup>5</sup> According to some of the defence lawyers, two lay members sitting on the bench with the judges were retired police officers, thus undermining the appearance of independence and impartiality of the court. More significantly the defendants were denied an adequate opportunity to prepare their defence. Defence lawyers were denied access to almost all relevant trial documents until two weeks before the trial commenced. In addition, according to the UN report, some of the defendants only gained defence lawyers after they entered court at the opening of the trial. Those who had defence lawyers before the trial were not in any case able to communicate with them in private as guards were always in earshot. Defendants were thus not even free to complain to their lawyers of the torture and ill-treatment they said they had suffered.

According to the HLC no witness testimony was presented (other than the examination of the defendants themselves) and the only non-documentary evidence was one machine gun. When challenged by the defence lawyers to produce other weapons they allegedly possessed, the prosecution admitted that no others had been found and that the other weapons

and accepted by the court as some of the most substantial evidence for the prosecution.

figured in the defendants' "confessions". The judgment nevertheless recorded them as having possessed the weapons. Documentary evidence, in addition to the NMLK statute and copies of Çlirimi, reportedly also consisted of photocopies and police lists of objects found in searches.

Although some defendants admitted parts of the charges, such as membership of the NMLK and producing and distributing Çlirimi, others denied the substance of the charges in total. For example, Shukrije Rexha was recorded in the judgement as stating that three articles written by her had appeared in Çlirimi, but that she had had little contact with the editors and had not had time to learn of the nature of the organization.

Further concerns stem from the fact that nearly eight months passed between the issuing of the verdicts in court on 30 May 1997 and the receipt of the written judgment by the defence lawyers on 31 January 1998. Although, in accordance with international standards, the initial trial was held and concluded promptly, the defendants have been hugely delayed in their opportunity to submit appeals which had to await the written judgment. No investigations are known to have been initiated into the defendants' allegations of extraction of statements by means of torture.

In light of the range of concerns listed above and others for which there is not space here, Amnesty International believes that the defendants in this case did

---

<sup>4</sup> Cited in Two trials of Kosovo Albanians charged with offences against the State in the Federal Republic of Yugoslavia in 1997, document of the United Nations High Commissioner for Human Rights (E/CN.4/1998/9).

<sup>5</sup> Two trials of Kosovo Albanians charged with offences against the State in the Federal Republic of Yugoslavia in 1997, document of the United Nations High Commissioner for Human Rights (E/CN.4/1998/9).

not receive a fair trial and should be given the opportunity of a retrial in accordance with international standards.

In June 1997 the trial of a second group of 15 defendants started. Of the defendants only three - Besim Rama, Avni Nura and Idriz Asllani - were in court; 12 other men were tried in absentia. All were convicted the following month and were sentenced to between four and 20 years' imprisonment. One of those tried in absentia was Adem Jashari (for the subsequent fate of whom see the accompanying document *Violence in Drenica, #2* in this series, AI Index: EUR 70/33/98). They were convicted variously of having received military training in Albania and, as members of the KLA, having perpetrated a number of violent acts between 1993 and 1996 including attacks on police patrols in which police officers were killed, and attacks on centres where Serbian refugees were housed. Observers at the trial, who included a delegate of the Swedish Section of the International Commission of Jurists<sup>6</sup>, made similar observations as to the fairness of the trial as in the case of the Klinaku trial. There were numerous violations of the CCP and international standards in the pre-trial process, notably denial of access to defence counsel and the illegal detention of two of the accused for 16 days in September 1997. At the trial the defendants complained that confessions had been obtained by torture, and their lawyers complained that they had been denied access to documentary evidence. Besim Rama withdrew all the statements he made during the interrogation and admitted only a small part. On 27 May 1998 five men, the first named being Mehmet Memçaj, were convicted in the Prizren District Court, one of them in absentia, and were subsequently sentenced

<sup>6</sup> Report to the Swedish Section of the International Commission of Jurists from Judge Bengt Bondeson and Public Prosecutor, Sara

### **The trial of Besim Rama and others**

of the charges against him. According to the judgment, which was not received by the defence lawyers until February 1998, the court nevertheless placed great weight on the defendants' pre-trial statements which appeared to be accepted as the main evidence for their guilt.

### **The trial of Nait Hasani and 16 others**

In December 1997 the third group headed by Nait Hasani was convicted on similar charges to those in the Besim Rama trial. Two more defendants were tried in absentia and another two died before the trial - one of them, Jonuz Zeneli, in custody (see above). Amnesty International had similar concerns about the fairness of their trial, and other human rights violations that occurred in the case, particularly with regards to the unacknowledged detention of Nait Hasani for one month in February 1997 (see above).

In addition Amnesty International was concerned about the safety of the defence lawyers in this trial, following an attack on one of the lawyers, Hasan Hoti, by three unidentified armed men, believed to be Serbs, in November 1997. As of June 1998 the written judgment has still not been issued for this trial.

## ***Unfair trials in 1998***

### **The trial of Mehmet Memçaj and three others in Prizren, May 1998**

to between three and seven years' imprisonment. The men were arrested in and around Prizren between 27 and 28 February 1998. The police announced the

Källberg, Stockholm, concerning observer assignments at the District Court in Priština, Yugoslavia on 3-6 June 1997.

names of four of them and another man, who was later released, as having been taken into custody "on the occasion of the terrorist attacks of 28 February and 1 March 1998", referring to the incidents in Likošane and \_irez on those days (see the accompanying document *Violence in Drenica, #2* in this series, AI Index: EUR 70/33/98). The subsequent indictment made absolutely no connection with the Likošane incidents, but accused them of placing a bomb in Prizren (which apparently failed to explode), possessing and smuggling arms, and being members of an organization called the National Movement for the Republic of Kosovo. Their lawyers complained that they were not given access to their clients until 3 March and were still then unable to speak in confidence to them. The detainees also complained that they had been subjected to torture by police with electric shock batons to extract "confessions" from them, although they were unable to reveal all the details because of the presence of guards during the lawyers' visits. They also complained that the police had continued to interrogate and torture them after they had been placed in the custody of the investigating magistrate because of the "incomplete" statements they had given to the investigating magistrates. Amnesty International has yet to obtain full details of the trial, but believes that there are already strong indications to doubt the fairness of the trial.

As of late May 1998 there were at least dozens of other ethnic Albanians in detention in similar political cases, some of whom have been indicted. Amnesty International is seeking details of these detainees amid fears that they too have been tortured or ill-treated in custody and will face unfair trials.

### ***Amnesty International's Recommendations***

*Amnesty International June 1998*

### **To the Serbian and Yugoslav authorities**

- The authorities should take action to ensure that adequate standards are maintained in the administration of policing and dispensing of justice. Particular attention should be paid to ending the routine ill-treatment or torture of suspects in police custody. As a vital first step they should enforce in practice the right of a defendant to be interrogated in the presence of a defence lawyer of his/her choice under Article 29 of the Constitution of the FRY and Article 24 of the Serbian Constitution. The Code of Criminal Procedure should be brought in to harmony with the Constitution and international human rights standards as soon as possible.
- The authorities should take further steps to ensure that defendants in political trials receive fair trials. These should include ensuring the defendant's right to communicate in private with his or her legal representative at all stages of the legal process.
- The authorities should take further steps to ensure that defendants in political trials receive fair trials. These should include ensuring the defendant's right to communicate in private with his or her legal representative at all stages of the legal process.
- The authorities should ensure that statements extracted by means of torture are not used as evidence in trials and that in all cases allegations that defendants have been tortured or ill-treated are promptly investigated and that those responsible are held to account.
- The authorities should ensure that criminal investigations and procedures are initiated to hold to account any officers

*Document Series A.#4. AI Index: EUR 70/35/98*

suspected of ordering or perpetrating human rights violations.

- The authorities should ensure that all members of the security forces carrying out law enforcement functions in Kosovo province are acquainted with and trained in the application of the following
  - The authorities should allow the opening of the field office of the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) which the High Commissioner has requested in Priština.
  - The authorities should grant permission for an extended temporary human rights monitoring mission of the OHCHR as recommended in the letter of the Special Rapporteur on the Situation of Human Rights in the Territory of the Former Yugoslavia, Jiří Dienstbier, to the UN

international standards:

- ◆ The UN Code of Conduct for Law Enforcement Officials
- ◆ The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Commission on Human Rights dated 14 April 1998.

- The authorities should grant permission for the redeployment of the Mission of Long-Duration of the Organization for Security and Co-operation in Europe.

**To all UN contributor governments**

- The contributing governments should ensure that the OHCHR field offices in Yugoslavia are properly resourced to meet the demands placed upon them.

**KEYWORDS:** TRIALS<sup>1</sup> / TORTURE/ILL-TREATMENT / ETHNIC GROUPS / CONFESSIONS / INCOMMUNICADO DETENTION / DEATH IN CUSTODY / NON-GOVERNMENTAL ENTITIES AS VICTIMS / INDEPENDENCE OF JUDICIARY / LAWYERS