

**Flygtningenævnets baggrundsmateriale**

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## Amnesty International's Concerns in Serbia, Including Kosovo: January-June 2009

### General and political developments: SERBIA

Serbia continued to aspire to membership of the European Union (EU), and in June received positive reports from the Chief Prosecutor to the International Criminal Tribunal for the former Yugoslavia (Tribunal) on the country's cooperation with the Tribunal. However, the EU maintained their position that progress towards EU membership remained dependant on the arrest and transfer to the Tribunal of former Bosnian Serb General Ratko Mladić and former Croatian-Serb leader Goran Hadžić, the two remaining indicted suspects.

Serbia's relationship with Kosovo, which had declared unilateral independence in February 2008, remained extremely problematic. By the end of June, Kosovo's independence had been recognized by 60 UN member states.

Proceedings continued at the International Court of Justice, pursuant to the adoption by the UN General Assembly in October 2008 of a request by the Serbian government to the International Court of Justice to issue an advisory opinion on the legality of Kosovo's declaration of independence. By the end of June some 36 member states had submitted their opinions to the court.

### Impunity for War Crimes

#### *Accountability of the international community*

No one had been brought to justice for serious violations of international humanitarian law by member states of the North Atlantic Treaty Organization (NATO) against the then Federal Republic of Yugoslavia (FRY) during NATO's "Operation Allied Force" between March and June 1999, in which approximately 500 civilians were killed and 900 injured. Victims and their families, including the families of those killed in the bombing of Radio-Television Serbia on 23 April 1999, continued to call for justice and reparations, including compensation.

#### *International Criminal Tribunal for the former Yugoslavia*

The Serbian National Hague Cooperation Council Action Team issued a new arrest warrant for Ratko Mladić and Goran Hadžić on 9 January, offering a 1 million Euro reward for information on the former's whereabouts, and 250,000 Euro for information regarding the latter.

On 24 January Vojislav Šešelj, leader of the Serbian Radical Party, on trial for crimes against humanity and war crimes in Croatia and Bosnia and Herzegovina, was indicted for contempt of court on charges of disclosing the identities of three protected witnesses. Proceedings in the main trial were adjourned.

Five senior Serbian political, police and military leaders were convicted on 26 February of war crimes and crimes against humanity in relation to Kosovo; they had been charged with joint criminal enterprise in crimes against humanity and war crimes, including the forcible deportation and murder of thousands of

ethnic Albanians during the conflict in Kosovo. Former Yugoslav Deputy Prime Minister Nikola Šainović, Yugoslav Army General Nebojša Pavković and Serbian police General Sreten Lukić were convicted of deportation, other inhumane acts (forcible transfer), murder and persecutions (including rape) on political, racial or religious grounds and each was sentenced to 22 years' imprisonment for crimes against humanity and war crimes. Former Yugoslav Army Colonel General Vladimir Lazarević, and former General Chief of Staff (later Minister of Defence) Dragoljub Odjanić, were convicted of aiding and abetting the deportation, and forcible transfer of the ethnic Albanian population of Kosovo and other inhumane acts and each was sentenced to 15 years' imprisonment. Former President Milan Milutinović was acquitted.

In their judgement the Trial Chamber stated that they had been unable to attribute responsibility to any of the accused, including Serbian police General Sreten Lukić, for the conspiracy in 1999 to transfer to Serbia in refrigerated trucks of the bodies of more than 800 ethnic Albanians killed in Kosovo, and bury them in Ministry of Interior property.

Trial proceedings against Vlastimir Đorđević opened at the Tribunal on 27 January 2009. As the former Assistant Minister in the Ministry of Interior and Chief of the Public Security Department (RJB) he had been responsible for all RJB units in Kosovo between 1 January and 20 June 1999. The former police general was indicted for crimes against humanity and laws and customs of war in Kosovo in that "police forces under his command perpetrated a series of grievous crimes that ended with the deportation of around 800,000 Albanian civilians". Vlastimir Đorđević was indicted in relation to the enforced disappearance of more than 800 ethnic Albanians, for individual and joint responsibility for his participation in "the joint criminal enterprise... [including that] ...[t]ogether with [Vlajko] Stojiljković and others, he took a lead role in the planning, instigating, ordering and implementation of the programme of concealment by members of the RJB and subordinated units of the crime of murder, in coordination with persons in the RDB [state security] and in the VJ [Vojska Jugoslavije, Yugoslav Army]." The proceedings against him remain pending.

On 10 May the Appeals Chamber quashed the five-year sentence imposed on Veselin Šljivančanin, finding that the Trial Chamber had in September 2007 erred in acquitting the former Yugoslav National Army (JNA) officer of aiding and abetting the murder of 194 people (including civilians and prisoners of war) at Ovčara farm in Croatia in November 1991. His conviction for aiding abetting torture and ill-treatment of the prisoners was upheld. The appeal chamber also upheld the 20-year sentence imposed on his co-accused and superior officer, JNA colonel, Mile Mrksić.

Bosnian Serb leader Radovan Karadžić, who had been arrested in Belgrade and transferred to the Tribunal in June 2008, had entered a not guilty plea in June; the trial is expected to start in September.

### *Special War Crimes Chamber at Belgrade District Court*

Trials continued at the Special War Crimes Chamber (WCC) at Belgrade District Court against former military personnel and Ministry of Interior police charged with war crimes in Croatia, BiH and Kosovo. Only cases relating to Kosovo are summarised here.

On 8 January 10 ethnic Albanians, former members of the so-called Gnjilane/Gjilan group of the Kosovo Liberation Army (KLA) arrested in Preševo/Presheve in southern Serbia in December 2008, were remanded pending investigations into allegations of the abduction, murder and rape of Serbs in Kosovo following the end of the armed conflict in 1999. Ethnic Albanians continued to protest the arrests alleging that the men had been ill-treated by the police; an investigation was opened by the Ombudsperson in February. Nine of those arrested were indicted in June (one was released), along with other suspects still at large, on charges including the unlawful detention, inhuman treatment, torture, mutilation and murder of at least 52 Serbs, Roma and ethnic Albanians, and the rape of a "large" number of women in Gnjilane/Gjilan between June and October 1999.

### *Enforced disappearances and abductions*

Investigations continued into the alleged post-war abduction and subsequent torture of Serbs by members of the KLA at the "Yellow House" near Burrel in Albania by both the Office of the War Crimes Prosecutor (OWCP) and Senator Dick Marty, in his capacity as a rapporteur for the Parliamentary

Assembly of the Council of Europe. In addition, according to the OWCP in February at least 10 investigations were in progress relating to the murders of ethnic Albanians whose bodies had been transferred in 1999 to Serbia for reburial.

On 24 April, in the first case at the WCC to involve high ranking police officers, four members of the Serbian police were convicted and sentenced for the murder of 48 members of the Berisha family and Abdullah Elshani, in Suva Reka/Suharekë, Kosovo, in March 1999. Their bodies had first been buried in military ranges in Prizren, Kosovo. Some, but not all, of the bodies were transported to Batajnica in Serbia proper, and were among the first bodies (some still bearing their identity cards) exhumed in 2001 to be identified. Proceedings had opened on 2 October 2006. Radojko Repanović, the former commander at the Suva Reka police station, and police officer Slađan Čukarić were convicted and sentenced to 20 years' imprisonment. Reserve policeman Miroslav Petković was sentenced to 15 years and former State Security Inspector, Milorad Nišavić, to 13 years. The court acquitted two senior police officers, Radoslav Mitrović, former commandant of the 37th Battalion of the Serbian Special Police Unit (PJP) and Zoran Petković, assistant commander of the Suva Reka police station, of criminal responsibility for the murders.

Proceedings continued against Sreten Popović and Miloš Stojanović, former commanding officers of the Operational Pursuit Group of the PJP, indicted in August 2006 for having "deprived their victims of the right to an impartial and fair trial". Agron, Mehmet and Ilijem Bytici were brothers of Kosovo-Albanian origin who held US citizenship and had joined the Atlantic Brigade fighting alongside the KLA. On 8 July 1999 they were released from Prokuplje District Prison, after being convicted and sentenced to 15 days' imprisonment for crossing into Serbia proper. Following their release they were allegedly detained by the defendants and taken to a training camp at Petrovo Selo where they were shot on 9 July 1999. Their bodies had been found in 2001 at the top of mass graves at Petrovo Selo. In June former Public Security Chief Vlastimir Đorđević testified by video-link from the Tribunal's custody. The trial will resume in September.

On 18 June, four members of the Paramilitary Group known as the "Scorpions" were convicted of the murder of Albanian civilians in Podujevo/ë. Željko Đukić, Dragan Medić, Dragan Borojević and Miodrag Šolaja, were accused that on 28 March 1999, they had taken 20 Albanians -- women, children, and the elderly -- from the house of the Bogujevci family where they were all staying and ordered them to go to the courtyard of the house of Halim Gashi. According to the accounts of the surviving children, as soon as Shefkate Bogujevci entered the courtyard, an unknown member of the "Scorpions" unit fired at her. When they realized that their mother, Shefkate Bogujevci, has been shot, her children, Fatos, Jehona, Ljirije, and Genc Bogujevci, ran to her. At that moment, several "Scorpions" opened fire and started shooting at the three Bogujevci children and the other civilians in the courtyard. The bodies of the Bogujevci family were buried in mass graves just outside the graveyard in Podujevo/ë. Proceedings had opened in September 2008. Željko Đukić, Dragan Medić, Dragan Borojević were sentenced to 20 years' imprisonment, and Miodrag Šolaj to 15 years.

In March police officers in Leskovac organized protests against the arrest for war crimes in Kosovo of four former members of the 37th Battalion of the PJP. Police reservists were seen wearing T-shirts printed with photographs of the arrested PJP members on the front and the slogan "Heroes of the 37th Battalion" on the back. According to the non governmental organization (NGO) Humanitarian Law Centre (HLC) the protests, apparently supported by the Police Administration of the City of Leskovac and the Presidency of the Independent Police Union of the Republic of Serbia, called for the release of the arrested officers and public disclosure of the names of the witnesses. Police officers were reportedly heard threatening to kill the police witnesses and calling for them to be tried for treason.

### **Excessive use of force: unlawful killing**

On 19 March Đorđe Zarić, aged 24, was shot in the head by a police officer after the car in which he had been travelling was stopped after a car chase. The police claimed that the shooting had been an accident, but on 21 March the Minister of Interior apologized to the family of the dead man and reported that he had already ordered changes within the riot police brigade. On 28 June, a riot brigade police officer was charged with the murder of Đorđe Zarić.

## **Torture and ill-treatment**

In January, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported on their visit to places of detention in Serbia in November 2007. Despite a reduction in the numbers of allegations received by the CPT delegation, reports of ill-treatment, verbal abuse and threats, the disproportionate use of force at the time of arrest, and the presence of non standard-issue implements continued. While the majority of persons detained at police stations reported they had been granted access to a lawyer, the CPT noted that juveniles had often been interviewed in the absence of a lawyer, parent or other appropriate adult. Material conditions of detention were generally inadequate.

The Committee against Torture (CAT) on 8 May 2009 issued a decision (made public in July) relating to an application made in 2004 by Besim Osmani, who alleged that he had been beaten and verbally abused in June 2000 by what were believed to be plain-clothed police officers, in the presence of uniformed officers, during a forced eviction at the “Antena” settlement in New Belgrade. Besim Osmani’s four-year-old son was also hit.

The CAT found that Besim Osmani had been subjected to “cruel, inhuman or degrading treatment or punishment,” and noted that the “infliction of physical and mental suffering [was] aggravated by the complainant’s particular vulnerability, due to his Roma ethnic origin and unavoidable association with a minority historically subjected to discrimination and prejudice.” The CAT also found that “the State party’s authorities who witnessed the events and failed to intervene to prevent the abuse have at the very least ‘consented or acquiesced’ to it.” The CAT found that Serbia was in violation of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by failing to: open a criminal investigation (Article 12); ensure that Besim Osmani had the right to complain and to have his case promptly and impartially investigated (Article 13); enabling Besim Osmani to obtain redress and to provide him with fair and adequate compensation (Article 16). The CAT urged Serbia to: conduct a proper investigation; prosecute and punish the persons responsible; and provide Besim Osmani with redress, including fair and adequate compensation.

## ***Prison Conditions***

In January the CPT (see above) expressed concerns about the severe overcrowding in prisons and at material conditions of detention, especially at Belgrade District Prison, which was described as dilapidated, and where prisoners – and in particular juveniles – remained without bedding often for weeks after they had been admitted.

The ill-treatment of prisoners was reported in the high security and remand wings of the Požarevac-Zabela Correctional Institution and in the Belgrade Special Prison hospital where truncheons were reportedly used on prisoners. Concerns were also expressed about discrepancies between entries in custodial and medical registers on the use of “coercive means” to restrain prisoners in all prisons visited. The CPT also expressed concerns about the quality of prisoners’ medical records.

According to information from the Leskovac Committee for Human Rights, lawyers acting for a man referred to only as N.N, detained at Niš Correctional Centre (KP-Niš), were in January refused access to medical records for their client, who had in 2008 alleged that his arm had been broken during an assault on him by prison guards.

No independent complaints mechanism available to person deprived of their liberty has yet been established, even though Serbia had ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in September 2006. Article 17 of OPCAT requires the state party to establish an independent National Prevention Mechanism (NPM) within one year of ratification. It was envisaged that the Protector of Citizens (Ombudsperson) would undertake this role.

An Amended Law on Execution of Penal Sanctions was drafted by the Ministry of Justice, in conjunction with the Organization for Security and Co-operation in Europe (OSCE), providing for the power of

inspection by the Ministry of Justice and the introduction of an effective and impartial internal complaints mechanism, including a new by-law on the internal oversight of prisons. The law is expected to be adopted by September.

## **Discrimination**

On 4 March a draft anti-discrimination law was suddenly withdrawn from the Serbian parliament, the day before it was due to be discussed. The draft law, proposed by the Minister for Human Rights and Minorities, had been subject to six months' consultation with members of civil society, but was withdrawn under pressure from the Serbian Orthodox Church and other religious institutions which had expressed concerns about two proposed articles. One article sought to guarantee freedom of religion, the other provided for the right to freedom from discrimination on the grounds of sexual orientation and the right to determine gender identity.

The introduction of the law including these clauses was consistent with government's obligations under international treaties to which Serbia is a party, and is part of the process of legislative reform demanded by the EU accession process.

The draft law was returned to parliament on 18 March, and following several days of debate – on some 500 proposed amendments – was passed by a small majority on 26 March.

In June the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities published its second Opinion, which recognized Serbia's progress since 2003 in the inclusion of a specific chapter on national minority protection in the 2006 Constitution; the adoption of non-discrimination provisions in the Criminal Code; and the establishment in 2008 of the Ministry of Human and Minority Rights. However, they expressed concerns that only in the province of Vojvodina were minority rights being effectively implemented. The Advisory Committee recommended, amongst other measures: that the judicial system address acts of discrimination against minorities more efficiently; and that "more resolute action" be taken to tackle discrimination against Roma in education, employment, health and housing, and the issuance of identification documents, "which hampers their access to social rights".

## ***VIOLENCE AGAINST ROMANI COMMUNITIES***

Roma communities continued to be vulnerable to attacks by non-state actors: on 6 June G.H., an internally displaced person from Kosovo living in Belgrade, was attacked by 10 unknown individuals while he was at work collecting paper for recycling. They reportedly kicked and hit him, and one person knifed him in the back. G.H. was taken to hospital, with pulmonary damage, where he made a statement to the police. However, he later discharged himself, as without identity documents he was not entitled to free medical care. An investigation was opened, but no progress had been reported by the end of June.

### ***The right to adequate housing***

The government had pledged to make housing one of the government's four top priorities during the year of their Presidency of the Decade of Roma inclusion, however at a municipal level, local officials (including the Mayor of Belgrade) chose not to implement government policy.

On 9 April - International Roma Day - 250 Romani people, including small children and the elderly and infirm, who had been the subject of an eviction from a temporary settlement in New Belgrade on 3 April, remained without shelter in the absence of alternative accommodation. Many of those evicted had been previously displaced from Kosovo.

The Roma had been living in a temporary settlement, known as Blok 67, which was cleared to make way for an access road for the 2009 Student Games (Univerzijada Beograd 2009), to be held in June. Temporary alternative accommodation, in the form of containers, was provided in the Boljevci neighbourhood of Belgrade but local residents attempted to set them on fire in order to prevent the Roma from moving in. Although 60 families accepted alternative accommodation at the Orlovsko Brdo barracks, where they had no access to water or electricity, the majority remained at Blok 67 without permanent shelter. The authorities erected a fence around the community on 17 June for the duration of the games,

which restricted their freedom of movement. At the end of June a group of anti-fascist activists were twice attacked by members of the right wing group Obraz, (Honour), apparently because of their organization of a demonstration against the fencing-in of the Romani community in Blok 67.

## **Human rights Defenders**

Peščanik (Sandglass) is an NGO run by journalists Svetlana Lukić and Svetlana Vuković which aims to promote debate about human rights. On 22 January 2009 its website was hacked in what seemed to be a synchronised attack; it remained blocked for over a week. On 23 January, the signal for Peščanik's radio programme, broadcast on the independent radio station B92, was jammed. [The programme in question included criticism of the President of Serbia.] On 24 January 2009, the repeat broadcast was also blocked. At the same time, a car repeatedly rammed Svetlana Lukić's car, parked at B92, so much that its wheels were forced over a 10 inch curb. None of the witnesses present noted the car's registration.

Peščanik has subsequently filed criminal charges for Cyber Crime and the destruction of Svetlana Lukić's car. B92, the radio station which broadcasts Peščanik's regular programme, filed a complaint with the Telecommunications Agency in relation to the jamming of its signal.

## **General and political developments: KOSOVO**

The position of the UN Interim Administration Mission in Kosovo (UNMIK) remained ambiguous. In the absence of any Security Council decision to the contrary, the mission remained in Kosovo, despite the transfer of almost all its responsibilities to the Kosovo government (or to the EU-led mission, EULEX, see below). Following a process of "reconfiguration", UNMIK adopted a role as a mediator between communities, and providing support to minority communities and the returns process. In June the UN Secretary General reported to the Security Council that the Kosovo government had made a series of public statements "requesting UNMIK to conclude its mission, asserting that Security Council Resolution 1244 (1999) is no longer relevant and that they had no legal obligation to abide by it."

Responsibility for international policing, the administration of justice (with respect to war crimes and other serious crimes) and customs had been transferred in December 2008 from UNMIK to the EU rule of law mission (EULEX). Peter Feith acted as both EU Special Representative in Kosovo and International Civilian Representative for Kosovo.

On 21 January the Kosovo Security Force (KSF) replaced the Kosovo Protection Corps (KPC). With 2,500 personnel and 800 reservists, the KSF is not an army nor is it expected to take on a military role. At the end of June more than 200 Serb members of the Kosovo Police Service (KPS), who had resigned in protest at the independence of Kosovo in February 2008, returned to their posts.

In June Kosovo became a member of the International Monetary Fund.

## **Human rights institutions**

On 15 May 2009 the Kosovo Assembly confirmed the election of six local judges, including a Serbian and a Turkish judge, to the Constitutional Court. The Constitutional Court – also including three international judges – will provide residents of Kosovo with a body which has the authority to review legislation and to receive individual complaints of human rights violations by the Kosovo authorities. The law on the Constitutional Court in was passed in December 2008, and an interim secretariat for the court was established in February 2009. Three international judges remain to be appointed.

On 4 June, after four failed attempts, the Kosovo Assembly agreed on the appointment of an Ombudsperson; Sami Kurteshi will take over from Hilmi Jashari, who has held the post of acting Ombudsperson since 2006. Amnesty International had previously expressed concerns about allegations made since 2007 by international and local NGOs that delays and inconsistencies in the initial selection process, were due to political interference.

## **Impunity for War Crimes**

EULEX with the Ministry of Justice established an Office of Special Prosecutors composed of 10 local

and five international prosecutors to address war crimes and other serious crimes. They reportedly took over only 50 active war crimes cases from UNMIK.

On 4 March a panel of EULEX judges made their first conviction. Following proceedings initiated by UNMIK prosecutors Kosovo Albanian Gani Gashi was convicted of the murder, attempted murder and grievous bodily harm, of ethnic Albanians. He was sentenced to 17 years' imprisonment.

In April 2009, the Kosovo Supreme Court, comprising both international judges and Kosovar judges, heard an appeal by former senior KLA officers Selim Krasniqi, Bedri Zymberi and Agron Krasniqi who had been convicted and each sentenced to seven years' imprisonment in August 2006 of war crimes, including the illegal detention and kidnapping of Albanians in the village of Drenovac/Drenovc between June and July 1998. Their appeals were partially granted in relation to the time that the offence was committed (after the end of the armed conflict) and their sentences reduced to six years (Selim Krasniqi, Bedri Zymberi) and to four years and six months (Agron Krasniqi).

Agim Çeku, a former KLA commander, and subsequently a prime minister of Kosovo, was arrested on 23 June at the Macedonia-Bulgaria border on an Interpol warrant. The warrant was based on an indictment issued by the Serbian authorities alleging his participation in war crimes against Serbian and Roma civilian population in Kosovo during 1999. Despite calls, including from Amnesty International, for the Bulgarian authorities to ensure his extradition to Serbia, he was released by the court on 25 June, and returned to Kosovo the following day, despite being required by the Bulgarian authorities to remain in the country for 40 days, pending a decision on his extradition. This was the third time the former commander had been arrested, and subsequently released, on the same warrant.

### *Enforced disappearances and abductions*

Although the bodies of around half of those who disappeared or were abducted have been found, around 1,900 families in Kosovo and Serbia still awaited the news of the fate and whereabouts of their family members at the beginning of the year. Following EULEX's adoption of responsibility for the Office of Missing Persons and Forensics (OMPF) the number of exhumations increased: as of 13 May EULEX/OMPF had sent a total of 177 new bone samples for DNA analysis, and had returned the remains of 43 persons to their families.

### **Ethnically-based crimes**

Inter-ethnic violence which had started in late December 2008 continued in Mitrovica/ë on 2 January when an explosive device was thrown at Serb café, and a hand grenade subsequently thrown at fire-fighters putting out the fire at Albanian-owned shop which was set on fire after the first incident; six Serb fire-fighters, a reporter and a cameraman were injured.

On 4 January two Kosovo Serbs were attacked in north Mitrovica/ë by a group of 20 Albanians after their car had broken down in the Bošnjačka mahala area. KFOR commander Michel Yakovleff, interviewed in the daily *Koha Ditore*, stated that the incidents were criminal and not ethnically motivated. Also on 4 January, shots were fired at the house of Zoran Maksimović in the predominantly Serbian village of Livoc, near Gnjilane/Gjilan. Zoran Maksimović, who runs a children's NGO, reported that the bullets had broken the windows and damaged the door.

On 13 March the Supreme Court of Kosovo overturned the verdict against Kosovo Albanian Florim Ejupi, convicted by an international panel of UNMIK judges in June 2008 for the bombing of the Niš-Ekspress bus on 16 February 2001 near Podujevo/ë in which 11 Serbs were killed and at least 40 injured, 10 of them seriously. Serbian human rights organizations expressed serious concerns about the decision, on the basis that Florim Ejupi's conviction had been based on DNA evidence and the statement of a protected witness. A new investigation into the bombing was opened on 25 May.

On 17 March the Kosovo government issued a statement of regret for the inter-ethnic violence which took place over three days in March 2004, during which eight Serbs and 11 Albanians were killed, around 950 injured and more than 4,000 Serbs, Roma and Ashkalia forcibly displaced. The government also reported that 80 per cent of the repair work on 35 Serbian religious and cultural monuments damaged during the violence had been completed. In Serbia politicians noted impunity for the majority of reported

attacks, and the continued displacement of Serbs and others who had fled to northern Kosovo during the March violence.

In April Albanians seeking to return to the village of Brđani/Kroi i Vitakut in the predominantly Serbian north Mitrovica were prevented from rebuilding their houses by local Serbs, who demonstrated against the return. Many of the Serbs protested that they were unable to return to their homes in the same village. For 10 days EULEX police and KFOR troops were required to maintain security for the returning Albanians, including through the use of tear gas and stun grenades against Serb protesters. One Serb man was injured; several Serbs were injured in similar demonstrations in October 2008. In mid May, the situation had been resolved through an agreement to allow Serbs to also rebuild their houses in Brđani/Kroi i Vitakut. A barbed wire fence has been erected between the Serbian and Albanian construction sites, and is patrolled by armed EULEX police.

### **Impunity for the International community**

UNMIK had not yet brought to justice members of a Romanian Formed Police Unit who had been found by an internal UNMIK investigation in 2007 to have caused on 10 February 2007 the death of two men, Mon Balaj and Arben Xheladini, and the injury of two others through the improper use of rubber bullets.

On 19 March a public hearing by the Human Rights Advisory Panel (HRAP) had been due to take place in a case brought against UNMIK by the families of Mon Balaj and Arben Xheladini. The applicants (the families of Mon Balaj and Arben Xheladini and the two seriously injured men) alleged that the killings and serious injuries, as well as the lack of an effective investigation, constituted violations of the right to life, the prohibition of torture and inhuman treatment, the right to peaceful assembly, the right to a fair trial and the right to an effective remedy.

However, UNMIK refused to allow the hearing to be held in public, citing security reasons, and stated that only one member of each family and the two persons seriously injured would be allowed to attend.

The families of the victims, and the two victims in person, were extremely unhappy about the decision and instructed their lawyers to make a request to adjourn the hearing until it could be heard in public. This application was successful, and the HRAP decided that a public hearing would take place on 4 June.

However on 12 May, lawyers for the complainants were informed by the HRAP that they had been informed orally by the Special Representative of the UN Secretary General that he would be unable to attend the public hearing "under the procedure envisaged by the panel", and that an Administrative Directive would be adopted "in order to clarify the scope of public hearings before the panel".

### **Torture and ill-treatment**

On 20 January the CPT published a report on their visit to Kosovo in March 2007, covering places of detention including police stations, prisons and psychiatric/social welfare institutions then under the control of UNMIK. Serious concerns were expressed about the denial of rights of arrested persons, including the lack of access to doctors and lawyers. Persons detained in police stations reported that they had been ill-treated by KPS officers, and that such ill-treatment had taken place when international UNMIK police officers were not present. The committee was also concerned about reports of ill-treatment in several prisons by an elite "Intervention Unit", including the beating of a group of juvenile males at Lipjan/Lipljan correctional centre. Several recommendations were made with regard to the improvement of prison conditions, the most serious ordering the closure of completely unfurnished cells in Dubrava prison, used to hold "agitated prisoners" for up to 48 hours, and cells at Peje/Peč prisons measuring less than 4 square metres (about which Amnesty International had received a complaint from a former detainee). Concerns were also expressed about conditions in the majority of psychiatric/social welfare institutions, but the CPT were "impressed" by conditions at the new Shtime/Štimlje "Special Institute" for persons with mental disabilities, which replaced a previous institution which had been heavily criticised by the NGO Mental Disability Rights International and others in 1999.

The CPT also expressed concern about the killings of Mon Balaj and Arben Xheladini (see above), and asked to be informed of measures taken to prevent the recurrence of such incidents. The CPT had not

published a report on their visits to places of detention run by the Kosovo Force (KFOR), although publication of such reports had been agreed with NATO in June 2006.

### **Discrimination against Roma**

Roma, Ashkali and Egyptian communities continued to suffer disproportionate discrimination including in access to basic economic and social rights.

On 5 June the HRAP declared the complaint of N.M. and 142 others (Case no. 26/08) partially admissible. The complainants include 143 members of the Roma, Ashkali and Egyptian community who are, or had been, resident in five UNMIK administered camps for internally displaced persons in northern Mitrovica/Mitrovicë, and three NGO employees working in the camps. They all claimed to have suffered lead poisoning and other health problems caused by the contamination of the camps by lead from the Trepča smelter and mining complex. In June Human Rights Watch published a report on conditions in the camps, which found that the continued failure of UNMIK and its international partners to find a durable solution for the inhabitants of the camps constituted multiple human rights violations, including of the right to life; the prohibition of cruel, inhuman and degrading treatment; the right to health, including medical treatment; the right to a healthy environment; and the right to adequate housing.

### **Forcible Return of Minority Communities**

Bilateral agreements which allowed for the forcible return of members of minority communities to Kosovo were concluded or were being negotiated by the Kosovo authorities with EU member states, and with Switzerland. A further agreement on return was being negotiated with the Montenegrin authorities.

A readmission agreement being negotiated by the German authorities will reportedly allow for the forcible return of an estimated 18,500 persons including 3,500 Albanians, 10,000 Roma and 5,000 Ashkali, Gorani, Turks and Serbs. The agreement allows for the forced repatriation of people originating from Kosovo, regardless their ethnic background. This agreement is not in accordance with the current (2006) UN High Commissioner for Refugees (UNHCR) position on the continued international protection needs of individuals from Kosovo, according to which Kosovo Roma and Serbs continue to be at risk of persecution and should be granted asylum or continued subsidiary protection. A return and reintegration strategy agreed by the Kosovo authorities and UNMIK in 2007 was under-resourced, under-funded and has not yet been implemented.

According to UNHCR, between January and July 2009, some 356 members of minority communities voluntarily returned to Kosovo from displacement in the region, while a further 62 returned mainly from western Europe. During the same period, 1662 individuals including 23 Serbs, 70 Roma, 14 Albanians (returned to a minority situation) and 164 others from minority communities, were forcibly returned to Kosovo from western Europe, an increase of 15.5 per cent compared to the corresponding period in 2008.

### **Freedom of Expression**

In June the journalist Jeta Xharra, managing editor of the Balkan Investigative Reporting Network (BIRN) in Kosovo, was subject to threats to her life, including in the media, following a broadcast of the weekly programme "Life in Kosovo" (Jeta në Kosovë) on Radio Television Kosova (RTK) on 28 May 2009, which focussed on the right to freedom of expression in Kosovo. The authorities failed to denounce these threats to Jeta Xharra's life or take steps to ensure her protection.

### **Violence against women**

The OMPF published a preliminary report on the incidence of sexual assault in Kosovo, based on analysis of the Medical Examiners' Office records between 2003 and 2008. Out of more than 400 recorded cases only 10 per cent of perpetrators were reportedly brought in for forensic examination. Some 38 per cent of victims were under the age of 16. An accompanying survey found that 70 per cent of those interviewed had been sexually assaulted, the majority by male relatives; none had reported the assault to the authorities.

## Reports and public documents

Public Statement: *Kosovo: No justice for the February 2007 killings*, Index: EUR 70/001/2009, 9 February 2009.

Press Release: *Serbia/Kosovo: Wounds still open 10 years after start of war over Kosovo*, 19 March 2009, <http://www.amnesty.org/en/for-media/press-releases/serbiakosovo-wounds-still-open-10-years-after-start-war-over-kosovo-2009>

Press Release: *Hearing into deaths in Kosovo could find UN accountable*, Index: EUR 70/005/2009, 23 March 2009.

Web-feature: *Serbia: Roma evictions endanger people's lives*, 9 April 2009.  
<http://www.amnesty.org/en/for-media/press-releases/serbia-roma-evictions-endanger-people%E2%80%99s-lives-20090408>

Press release: *Serbia: Impunity for NATO – ten years after Operation Allied Force*, 23 April 2009, <http://www.amnesty.org/en/for-media/press-releases/serbia-impunity-nato-%E2%80%93-ten-years-after-operation-allied-force-20090423>

Report: *Burying the Past: 10 years of Impunity for Enforced Disappearances in Kosovo*, Index: EUR 70/009/2009, 8 June 2009, available in English, Albanian and Serbian.

Public Statement: *Kosovo: Amnesty International calls for the government to respect and ensure the right to freedom of expression*, Index: EUR 70/008/2009, 12 June 2009.

Press release: *Bulgaria: Promptly proceed with extradition of Agim Ceku to Serbia*, Index: EUR 15/003/2009, 25 June 2009.