



DEN NORSKE HELSINGFORSKOMITÉ

NORWEGIAN HELSINKI COMMITTEE

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**The Kurti Case:
Fair Trial?**

The ongoing Kurti trial illustrates serious concerns about adherence to fundamental legal and human rights standards governing the fair trial of accused persons, including the right to be fully informed in the case and to benefit from proper defense counsel. The case also highlights pre-existing concerns about detention practices in Kosovo.

The Danish and Norwegian Helsinki Committees have been monitoring the Albin Kurti trial since it began in autumn 2007. The Norwegian Helsinki Committee has been monitoring the case since the February 10th demonstrations, during which two men were killed and more than eighty injured. Throughout this period there are mounting concerns about whether the trial meets fair trial standards, or whether it will ultimately end with a need for retrial.

Not only was Mr. Kurti under extended detention for more than ten months with little legal justification for such measures, his case has proceeded with significant gaps of time between hearings and with a remarkably appalling level of defense counsel. Additionally, the court appears to have violated a number of procedural requirements throughout the process, raising concern that the case is in short unjust or as some suggest politically-motivated.

Regardless of one's personal views on Mr. Kurti and his movement or the politics of the moment, Mr. Kurti is entitled to a fair trial. He also enjoys the right to be free from unnecessary restriction on his freedom or liberty.

Mr. Kurti was duly notified of the hearing to take place yesterday, January 30, 2008. He should have been there as he is an accused before the courts operating in Kosovo and does not have the right to simply "not participate." But the court knew he would not show because of his principled stance of non-recognition of UN authority in Kosovo. The court necessarily had Mr. Kurti arrested and brought to the court. But was it then necessary to send him back to jail? Or was that punishment for a show of disrespect? Was it not possible to anticipate his actions and to ensure his presence in advance of the proceedings?

The judicial panel was clear that the reason for the most recent order of detention was to ensure Mr. Kurti's presence during the remainder of the trial. House arrest, a less restrictive form of detention, accomplished exactly this throughout the late summer and fall. Why deviate from this formula now? The international legal standard is to use the least restrictive measure when at all possible.

The Norwegian Helsinki Committee is pleased that it appears the court has begun to expedite the case, with two sessions scheduled already next week. This is all the more important given that Mr. Kurti is now detained in prison.

The Committee, however, continues to be deeply concerned about the appointment of defense counsel in this case. Certainly the court has the right and duty to appoint defense counsel. But with this right, with this duty, there are also obligations placed upon the court to ensure that appointed counsel is both conflict-free—able to act in Mr. Kurti's best interests—and zealously representing the client to the best of his/her abilities.

Neither is the case in the Kurti trial so far. During the December 2007 session Mr. Kurti motioned for the court to remove defense counsel Fazli Balaj from the case as he had publicly stated on a television talk show in the aftermath of the protests that Mr. Kurti and the Self-Determination

Movement were guilty of violating the law, inciting people to violence, and had stated that they intended to burn cars near the Parliament. The court, however, when unable to view a recording of the show due to technical difficulties, continued with the proceeding as though no such motion had been requested.

Mr. Kurti had further noted to the court that his defense counsel had never attempted to meet him in preparation for his defense. Counsel admitted as much. This was not addressed by the court during that session or during today's session, when the issue of non-existent representation efforts was again raised by Mr. Kurti.

To make matters more concerning, Mr. Balaj was not even present during yesterday's session. Another lawyer altogether, Mr. Ferki Xhaferi, who had only a slip of A-4 paper with him indicating he was to be present at the court—and no case files whatsoever—instead sat on Mr. Balaj's chair.

It was uniformly unclear yet again how this man came to sit in that courtroom. Who appointed him? How could he be appointed only the evening before? How could he be appointed without case materials to enable his preparation? How could it happen that Mr. Kurti was not even aware of his appointment and had never met him?

The situation is sadly similar to the November 2007 session during which the court identified and appointed Mr. Balaj to represent Mr. Kurti within an hour's time. Despite less than an hour to prepare, no familiarity with the case except his personal opinions, and no opportunity to meet with his client, Mr. Balaj proceeded, and the court allowed, even encouraged Mr. Balaj, to "represent" his client.

Fortunately, Mr. Xhaferi did not accept and the court did not suggest that proceedings go further without preparation. But why did the court wait until today to postpone the hearing? Could that not have been dealt with immediately the day before when it was clear that Mr. Xhaferi could not under any circumstances be prepared to zealously represent his client on such serious charges with less than twenty-four-hour's notice?

Furthermore, why was it only on January 30th—almost two months after the last trial session—that the court sought to proactively address Mr. Balaj's alleged conflict of interest in representing Mr. Kurti? The court had ample time to call an extraordinary session to view a working recording of the debate program and to ask Mr. Balaj for further explanation.

Such action back in December—certainly the responsibility of the court who appointed Mr. Balaj in the first place—would have enabled the trial to continue without interruption yet again.

In short, yesterday marked another disappointing day in the ongoing trial of Albin Kurti. One can only wonder what happens in cases that are not prioritized in the justice system or not being handled by the international system that exists in Kosovo today.

The international community and human rights groups have consistently raised concerns about the functioning of the justice system in Kosovo, including the incorporation of international judges and prosecutors into the system. Concerns about the level of legal reasoning and analysis, quality of defense counsel, lengthy detention and trial proceedings, and poor coordination between the many justice system actors are not new.