

Judges call for “radical review” of Milosevic trial

By Paul Mitchell
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Judges trying former Yugoslav President Slobodan Milosevic are calling for a “radical review” of the proceedings.

Milosevic is appearing at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, accused of genocide and war crimes in Croatia (1991-1995), Bosnia (1992-1995) and Kosovo (1998-1999).

The three judges in the Milosevic trial called for a “radical review of the trial process and the continuation of the trial in the light of the health problems of the accused.” It appears they will accept the prosecution’s demand that defence counsel be imposed on Milosevic, who has defended himself so far.

The judges have asked for a cardiologist to determine Milosevic’s ability “to continue to represent himself” and for tribunal officials to identify “counsel who might be assigned to the case should the Trial Chamber order such assignment.”

Considering abrogating Milosevic’s legal right to defend himself is an indication of how badly wrong things have gone for the prosecution. The Western powers believed the trial would be a straightforward case of confirming the former head of state’s guilt, under conditions in which the verdict had already been decided. Instead, in front of a world audience, Milosevic has challenged claims that he was solely responsible for genocide and ethnic cleansing.

Milosevic is a former Stalinist turned Serb nationalist and free marketeer. Without in any way denying that he shares political responsibility for the tragic events of the 1990s, he has argued with some success that the main responsibility for the eruption of ethnic conflict in the Balkans rests with the United States, Germany and the other NATO powers, and that it is they who should be charged with war crimes.

The court has also had great legal difficulty in making a case for a charge of genocide against Milosevic. The prosecution has been unable to produce any “smoking gun” insider who has testified to a plan or orders for genocide and has been forced to rely on unproved assertions of a chain of command existing between Milosevic and various Serbian

nationalist irregular forces.

Even when limited to responding to the prosecution’s case and counter-questioning its witnesses, Milosevic has had no such difficulty in establishing the role played by the Western powers and agencies such as NATO and the United Nations in creating the conditions for the breakup of Yugoslavia and the ensuing ethnic conflict.

The live broadcasts from the courtroom have allowed Milosevic to speak directly to an international audience. And his fate has been watched most carefully in Serbia, where there is substantial and growing disillusionment with the results of the supposed democratic transformation of the country since the bringing down of his regime by the Western powers and their puppets.

Polls report that 40 percent of the population say their living standard is unbearable and that Serbian society is worse off than any time previously. The social crisis has led to a resurgence of the extreme nationalist Serbian Radical Party, whose leader Vojislav Seselj is also detained at The Hague and which supports Milosevic. Once marginalised, the party’s candidate Tomislav Nikolic almost won the recent presidential elections with 45 percent of the vote.

Things look set to become far worse for the NATO powers if Milosevic is allowed to conduct his own defence. He has demanded to call 1,600 witnesses in his defence—including former US President Bill Clinton, British Prime Minister Tony Blair and heads of various secret services. And he has asked the court to issue binding orders for the release of intelligence documents of several Western countries.

In and of itself, this would prove acutely embarrassing, as such requests would almost inevitably be rejected by Washington, London, Berlin and all concerned. But what makes things worse is that Milosevic’s trial now impinges directly on US efforts to stage a show trial of a much bigger fish—Saddam Hussein.

The problems of the Milosevic trial and the need for the ICTY to meet international legal standards have not been lost on the Bush administration. It has refused to bring Saddam Hussein before an international tribunal, preferring

one in Iraq under the control of its stooge regime, with a few carefully chosen charges, a short timescale, untelevised proceedings and censored transcripts. But Milosevic's trial still threatens to undermine and discredit the prosecution of Saddam Hussein. Specifically, it raises the question of why Saddam should not be given the same legal rights as Milosevic; and it draws attention to uncomfortable parallels between the Western powers' initial support of both Milosevic and Saddam and how the two were then turned into pariahs in order to legitimise military interventions aimed at seizing control of geo-strategic areas of the world.

Therefore, there has been intense pressure to ensure that the Milosevic trial is concluded as quickly as possible.

Doctors appointed by the court say that Milosevic's very high blood pressure has damaged the left ventricle of his heart, putting him at risk of a heart attack, especially during periods of stress. Because of Milosevic's ill health and on the advice of doctors, the trial was stopped more than a dozen times between its start in February 2002 and two years later, on February 25, 2004, when the prosecution finished presenting its case.

At the end of February 2004, Milosevic was given three months to prepare his defence case, but he was again taken ill. Doctors ordered him not to work between April 14 and May 25, losing 41 days of the three months of court preparation time allotted. Milosevic was supposed to start his defence case in June and has been brought before the court three times to start it, only to have it postponed because of his illness.

Milosevic told the court, "Such a deterioration [in health] is the result of your decision not to give me enough time for my preparation.... That is quite clear. Therefore, it is my opinion that you are duty-bound to give me adequate time."

The trial is now due to start on July 14, with a break one week later for six weeks to compensate Milosevic for the 41 days lost.

One of Milosevic's lawyers, Zdenko Tomanovic, has explained that in preparing his defence the defendant must go through some 630,000 pages of written documents, 1,000 video cassettes, 100 CDs and 100 DVDs that he was given to examine in his cell.

As the situation has dragged on, the court has even been forced to consider what has been described as a "nuclear option." British barrister Steven Kay is one of the "amicus curiae"—literally a "friend of the court"—appointed by the court supposedly to observe proceedings on the defendant's behalf.

When Milosevic was ordered to appear in court on Monday, July 5, against medical advice, Kay warned the court, "It may well be that the court is at the stage now of having to consider his very fitness to stand trial at all."

This was rejected immediately by the prosecution, with prosecutor Geoffrey Nice insisting, "This is a case which must be tried. The accused wishes it to be tried."

For his part, Milosevic had already dismissed the idea.

The next day, the judges announced that the trial would resume on July 14, subject to Milosevic's state of health. They ruled out cancelling the trial, declaring, "There is no evidence that the accused is not fit to stand trial at all."

Instead they seized on Milosevic's ill health as a possible excuse for appointing defence counsel for him, adding that "there is evidence that the health of the accused is such that he may not be fit to continue to represent himself, and that his continuing to represent himself could adversely affect the fair and expeditious conduct of the trial."

The judges asked for a cardiologist to examine Milosevic and said they would then consider whether to compel him to accept a court-appointed lawyer, despite his repeated objections.

This would severely curtail Milosevic's ability to use the trial as a platform from which to attack his accusers. But it is far from clear whether it will make it possible to continue with the trial. Legal observers have noted that any appointed defence lawyer would have to question whether Milosevic was fit to stand trial and that the court would have to free him if doctors found that he was unfit to continue.

There are those within ruling circles who oppose such an option and still want Milosevic to be made an example of. But events have shown that there are also those who feel that a humiliation that can be explained away as the result of Milosevic's ill health is less damaging than prolonging a trial that has seen the spotlight so effectively turned on the criminal machinations of US and its NATO allies in the Balkans.

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